

THE
BENCH AND BAR
OF
TEXAS.

BY
JAMES D. LYNCH,

*Author of "Heroes of the South," "Kuklux Tribunal," "Clock of Destiny,"
"Kemper County Vindicated," "The Bench and Bar of Mississippi."*

'Tis not in mortals to command success, but
We'll do more, Sempronius, we'll deserve it.

—ADDISON'S CATO.

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INDEXED

INVOCATION.

ON BEING PRESENTED WITH A SWAN'S QUILL.

Quill, that through the classic ages
Glided o'er the polished pages,
Moulding golden gems of song
Which the years have borne along,
Shedding pearly drops of rhyme
All along the path of time,
Lighting it with sparks that rose
From the mind in song and prose,
Long before the pointed steel
Painted human woe or weal —
Come thou now, O faithful feather!
Bind my wayward thoughts together,
Smooth the roughness of my page
In this harsh and steely age;
Let new light upon it dawn,
And the music of the Swan —
That death-chanting bird that bore thee,
Swell its soothing strains around me,
Through my rugged rhythms trill,
Lured by thy soft charm, O Quill!
And may knowledge from thy point
Trickle, and its streams anoint
My scrubby growth of word and thought,
In its deep mysteries untaught —
Save so much as to make me feel
How little it doth yet reveal.
Leave upon my page some trace
Of good that Time can not erase,
Some thought not yet to mortals given,
Some new idea yet unriven
From the mind, some gleam of love,
Lighting, lifting man above.

PREFACE.

Biography is the anatomy of history. History tells us of man, biography, of men. But men do not know themselves, and how can others know them? To know one's self would be to know everything. All the branches of knowledge have their origin in the science of being, and, like meteors, flash along its firmament and lose themselves in its illimitable expanse; and for the mind to attempt to fathom itself is the mad butt of thought against the inconceivable — the push of airy nothing against infinity.

Metaphysics, which the Scotch Highlander defined to be “when a man dinna know what another man says, and the other man dinna know what himself says,” is the most incomprehensible of all sciences, and biography is conceded to be the most difficult field of literature; for the reason that there are so many uninterpretable elements in the composition of mind and character that no one but the Creator himself knows the texture and coloring matter of human thought and the hinging springs of human action. Yet, biography is the most important of all studies, and of all the species of writing, the most worthy to be cultivated.

History, with its monotonous compendium of facts, regarding national progress, either in polity or science, ceases to satisfy the curiosity and spirit of research, which in this age seek the causes and agencies of achievement rather than the mere statistics of event; and to supply the wants of intellectual progress, it must weave into the dry leaves of fact a personal impression, and the varied colors of individuality.

“Histories,” says Lord Bacon, “set forth rather the pomp of business than its true and inward resorts. But the lives of eminent men, if they be well written, representing individual achievement in the various spheres of

life, in which actions, both great and small, public and private, have a commixture, must necessarily contain a more true, natural and lively representation."

Subsidiary to this universal desire to know the means and traits of character by which individual eminence is attained, they furnish incentives to emulation — examples of the possibilities of merit, by which its qualities can be ascertained and measured, and the calculus of success eliminated; and this knowledge is a debt which every person who has attained eminence owes to his fellow-man. All biographies should be written that can impress the rising and future generations with the rewards of merit and the value of exertion, and which shed light upon the path of effort. But none should be written which do not make us think better of their subjects than before, and the sentiment *nil de mortuis nisi bonum*, is applicable to the living as well as to the dead.

The author has been engaged nearly one year in the preparation of this work, but several months of that time were devoted chiefly to procuring sufficient encouragement to justify the undertaking; and if Plutarch deemed it necessary to reside forty years at Rome in order to prepare himself to write the lives of its eminent citizens, surely the author can claim, under cover of the disparity of circumstances, immunity from any severe animadversion upon his shortcomings.

The object of this work is to present to the world, and especially to the rising and future generations of Texas, a history of the eminent judges and lawyers who have built up and elevated the jurisprudence of the State; to preserve their memories and characters, to set forth the methods and measures of their success as examples and incentives to those who are to follow in their footsteps, and to show them how much can be achieved by energy, uprightness and skill.

In selecting his subjects the author has occupied neutral ground. He has had no prejudices to subserve, no preferences to promote, and no ties of obligation to draw him from the path of his own judgment. He has stood as Lord Coke

says a juror should stand "as indifferent as he stands unsworn." He has had no partiality for political distinction; for that is sometimes the least exemplary of all prominence; nor have those selected for subjects had any agency whatever in the matter. The selections were carefully made by the author, without constraint or influence, in conformity with the design of the work. He has been guided chiefly by the beams of eminence which flash from the judicial records of the State.

It is true that persons in Texas, as elsewhere, have held high positions, who never ought to have held them; for the reason that they possessed no qualifications which entitled them to such superficial marks of distinction over many others, often superior to them in merit, but less fertile in the methods of obtaining preferment. With such the author has no concern; nor does this work profess to make mention of every good judge and skillful lawyer. The Texas bar will bear favorable comparison with any in the Union; and there have been, and are now, many gentlemen in the State, whose professional qualities and characters are full worthy of the most meritorious mention in any work; but it has been the design of the author to embrace in this volume only those whose professional careers have been characterized by an established eminence, achieved by long and successful practice, and which have made marked impression upon Texas jurisprudence, and if any of these have been omitted it is not the author's fault. Coming to Texas an entire stranger, with no acquaintance with its jurisprudence, or with the customs of the country, the author undertook a difficult task; but he has been constantly encouraged by the most polished courtesy and kindness on the part of all with whom he has come in contact; and to that kind-hearted and magnanimous gentleman, Maj. J. T. Brackenridge, of the First National Bank of Austin, he is particularly indebted for financial favors which greatly aided him in the preparation of the work.

In the execution of his task he has found it difficult in many instances to obtain the data necessary to enable him to accomplish the object of the work, and the metaphysical

poverty of language has often occasioned him perplexity in finding terms to express the multifarious features and varied shades of character. He would have included other deceased lawyers of the Republic and State, could he have obtained sufficient information in regard to them. But the corroding finger of time has already dimmed the records of their greatness and stilled the hearts upon whose tablets their virtues were inscribed, leaving only, here and there, a glimmer of those lights whose brilliancy kindled the rising glory of the State.

With these inscriptions he feathers its wings and commits it to the flight of its destiny, and if it should return with the olive branch of favor, the author will be glad; but if it should be lost in the crypts of wasted effort, he will still be contented with the memorial of its conscientious mission.

JAMES D. LYNCH.

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THE BENCH AND BAR OF TEXAS.

CHAPTER I.

INTRODUCTION.

GENIUS — ITS SOURCE — ITS UNIVERSAL APPLICATION — ITS VARIED MANIFESTATIONS — THE CERTAINTY OF ITS ASSERTION — THE LAW ITS PECULIAR SPHERE — FAME THE MEED OF GENIUS — THE COMMON LAW A PROLIFIC SCHOOL OF FAME.

The definition of that intuitive principle or subtle quality of the mind, which we call genius, has never yet been formulated; at least, it has never received an intelligent interpretation among men. Its source lies concealed in the unexplored recesses of human nature; nor is its presence known until, awakened by the touch of opportunity, it bursts from its gyves, and flashes upon the world with a light that illuminates the extending scope of its own vision.

But whatever may be the abstract nature of genius, its qualities are readily recognized and its manifestations easily judged. Its course is upward and onward, and its flight is bounded by no definable horizon, while its zenith is hidden somewhere in the realms of eternal and untarnished light.

The application of genius is universal, and it has kindled its beacons along the highway of every sphere of life, penetrated the occult depths and obscure labyrinths of every science, and illumined a path for the advancement of every art. It is, indeed, the assignable coefficient of all enterprise and the multiplicative exponent of all progress.

Nor is genius to be measured by its means of appliance. It perhaps required as much genius in Adam and Eve to

patch their fig-leaf aprons as in the manufacture of the finest fabric of modern art, and as much in Noah to fit the timbers of the ark as in the construction of the proudest vessel that plows the waves of the western world. But from the summit of Ararat it winged its way with new-fledged pinions until it rested in triumph upon the pinnacle of Solomon's Temple, whence it gave sanctified utterance to the tongue of prophecy, and guided the pen of inspiration along the pages of Holy Writ. Yet, while the hand of genius was hewing and fashioning the pines of Lebanon into the columns of the great temple, with uplifted eyes it gazed into the starry canopy of heaven, caught the first glimpse of the star of Christianity, and, like a sentinel on the watch-tower, heralded every gleam of knowledge that flashed across its vision; and thence, with increased glow, it illuminated the pages of Grecian and Roman literature, and evoked those sparkling gems of thought whose corruscations will dazzle the eyes of the intellectual world to the end of remotest time.

But in conformity with the vicissitudes of all human grandeur, the eyes of genius were at length closed by the cold finger of Fate; and, hurled by the hand of barbarism from the Tarpeian rock, it lay for ages hidden beneath the wreck and ruins of the Roman Empire; yet the spark glowed on until it slowly arose from the smouldering ashes, burst through the pall of the dark ages, and rekindled its blaze in the revival of learning.

Yet, while the true course of genius is upward, it is not always subordinated to the good of mankind, but is often perverted and prostituted to unhallowed purposes by the wayward passions that flourish in its train. While with pious sweat it could carve the lofty architraves and rear the temple of Jehovah, it could with sacreligious hand heave the huge rocks, and pile them upon the Tower of Babel, with mad desire to invade the very chambers of the Almighty. While it strung the pastoral lyre and tuned the shepherd's reed, it gave power to the destructive engines of Archimedes, and the fatal twang to the archer's bow; and though it glowed in the natural laws of Kepler and the

civil code of Justinian, flashed through the glasses of Galileo, and illuminated the hallowed visions of Luther, it also glittered in the crown of Alexander, burnished the helmet of Cæsar, and flamed in the sword of Bonaparte.

But whatever may be its mode of indication; whether it sparkles in the eye of the astronomer, smiles upon the lips of the minstrel, frowns upon the brow of the misanthrope, decks the finger of the artisan, or emblazons the sword of the conqueror, the characteristics of genius are the same. It is only the purposes to which it is devoted, the motives by which it is guided, and the brilliancy of its manifestations, that give to it any variety of character; and these are as varied as the channels of human thought, the fires of human passions, and the spheres of human action. It is the same principle that gives inspiration to the poet, conception of beauty to the artist, brilliancy of argument to the advocate, a lucid discernment to the judge, religious fervor to the devotee, and ingenuity to the midnight burglar and the common swindler. But in whatever direction its prowess may be exerted, its qualities are soon manifested.

A man of genius is sure to assert his superiority in whatever walk of life he may direct his course, and whether it be for the good, or to the detriment of society, depends upon the passions by which it is actuated. "Such men," says Lord Bolingbroke, speaking of superior spirits in elevated positions, "either appear like ministers of divine vengeance, and their course through the world is marked by desolation and oppression, by poverty and servitude; or they are the guardian angels of the country they inhabit, busy to avert even the most distant evil, and to maintain or to procure peace, plenty, and the greatest of all human blessings, liberty."

But however certain may be the development of genius, its conspicuity is often governed by circumstances, and frequently trammelled by the presence of other and incompatible qualities. Chief among these is timidity—a lack of courage sufficient to command upon all occasions the full

and clear exercise of the faculties, and to lay hold with proper alacrity and vigor upon great and rare opportunities.

It was from this cause that Cicero failed in his defense of Milo. He did not have the courage to display his usual and natural eloquence in the face of prejudice and under the frown of power; and Lord Erskine, through his reluctance to encounter Mr. Pitt and Edmund Burke, lost the great opportunity of his life in declining the defense of Warren Hastings; while, on the other hand, Lord Brougham wreathed his brow with immortal glory by his bold defense of the unfortunate Queen Caroline, in the face of courtly clamor and kingly opposition.

Genius is often marred by passion and prejudice. If it would retain its lustre, though clothed in the tinsel of eloquence, its lips must be rouged with the carmine of kindness and complacency. The angry invectives of Achilles gained him no sympathy, while the soothing eloquence of Nestor swayed the minds of the Grecian host. It is true that a judicious appeal *ad hominem* sometimes produces a wonderful effect, as in the first oration against Catiline; but the eloquence of genius rarely distills from the pale lips of anger. The furious accusations of Tertullus produced no formidable effect; but we are told that when Paul *reasoned*, the court trembled; and Lord Coke greatly impaired his efficiency, and injured himself in the eyes of posterity, by his virulence on the trial of Sir Walter Raleigh when he condescended to *thou* him as a viper and traitor.¹

Of all the schools of science, there is no one so prolific of the fruits of genius as that of the law. There is no sphere

¹ When all argument failed him, Coke, then Attorney-General, poured a torrent of abusive epithets upon the noble prisoner, and applied to him the term *thou*: "Thou hast an English face and a Spanish heart, thou traitor; for I *thou* thee, thou viper." A reference is made to this signification of *thou* in *Twelfth Night*, when Sir Toby Belch, in urging Sir Andrew Aguecheek to send a sufficiently provocative challenge to Viola, suggests: "If thou *thou'st* him some thrice, it shall not be amiss."

in life which presents so many necessities and motives for its exercise, and such a vast field for its development, as that of a lawyer. His constant intercourse with all sorts and conditions of men, and his frequent dealings with all the multiplied concerns of life, render him familiar with human nature, with all the workings of the human heart: its virtues and its vices, its strength and weakness, and the varied manifestations of its passions; and he necessarily becomes an expert in all the motives and a detective of all the springs of human action.

The wide scope of his learning, the confidence reposed in his honor and integrity, his tutored conservatism, and usual freedom from the virulence of party and the malignancy of faction, constitute for the upright lawyer a just claim to be a leader of his fellow-men; and when to this broad field of knowledge he brings the rare gift of genius, it, at once, places him in the line of distinction, and, with the aid of other and usually concomitant virtues, raises him, sooner or later, to a proud eminence of superiority, and procures for him a just title to the fee of fame.

But while the bar offers the most illimitable scope for its exercise, it is the severest test, and most precise and exacting of all the measures of genius. It permits no successful charlatanism, no ephemera of superficiality and pretension, but subjects every candidate for superiority, every claimant to the quality of excellence, to a just and infallible estimation.

A title to fame acquired under the eye of such close, competent, and penetrating scrutiny, amid such exacting circumstances, and under such a nice adjustment of qualifications, is surely of an exalted character, and worthy of the highest admiration of mankind. Such fame is not of that kind which Pope would have us to believe to be a temple of ice melting away with each returning sun; nor is it a mere second life upon the breath of others, or posthumous inheritance founded upon custom or arbitrary rules of descent; nor does its tenure depend upon any uncertain fine. It is the most certain and enduring of all earthly possessions, the *ultima thule* of human attainment, the

crowning glory of pre-eminent virtue, the meed of an immortal name. No ;

Say not to me such greatness ever dies,
Or Lethe's waves can over virtue roll ;
For glory has its realms beyond the skies,
And there it copies off its earthly scroll,
There sets its music to celestial chime ;
And when its bright and proud historic page
No longer flutters to the breeze of time,
Beyond the reach of man's invidious rage,
Its shafts will rise where time knows neither youth nor age.

The vast and intricate system of common-law jurisprudence, with its comprehensive doctrines, its nice shades, subtle distinctions, and unlimited application, has been from time immemorial a fertile field of fame. It is there that we find those brilliant precedents of eminence, those illustrious examples of true greatness, which have afforded marks and models for the aspiration of every country, and of every age since the days of Runnymede.

It is there that ambition may revel among the most gorgeous pictures of glory ; where genius can find an unlimited scope for the exercise of its utmost powers ; where freedom may find shelter from the pelting storms of oppression ; where the statesman can gather material for the fabric for the wisest government, and the patriot may clothe himself in more than Vulcanian armor for the defense of the liberty and honor of his country.

It was in this field that Coke and Hardwicke, Mansfield, Eldon, and Burke, and a host of others no less renowned, erected their monuments of eternal glory. Notwithstanding the difficulties of the way, the height and ruggedness of the ascent, there is no sphere in life where so many hands are beckoning from the lofty eminence, and where so many footprints lead to the summit, as the law. Nor are these confined to the steps of the Inner Temple, or to England's soil, but up the same pathway, and to a no less degree of eminence, ascended our Marshalls, Storys, Taney's, Kents, Hemphills, Robertses, and others to whom it will be no disparagement to add, to a less degree.

CHAPTER II.

A VIEW OF THE LAWS AND ADMINISTRATION OF JUSTICE OF THE MEXICAN STATE OF COAHUILA AND TEXAS—1824-1835.

It was not at first view deemed essential to the design of this work to extend its province and locate its beginning so remote from the present *status* of Texas jurisprudence as to embrace a notice of the Spanish-Mexican institutions which obtained in the State of Coahuila and Texas, but as they were found lurking among the elements of the judiciary system of the Texas Republic, and still clinging by analogy, at least, to tenures, marital rights and laws of inheritance, it was thought best to notice them so far as they are qualified to shed light upon the origin of Texas jurisprudence.

On the 15th of August, 1824, the constituent Congress of the State of Coahuila and Texas, in session at Saltillo, declared itself legally installed in conformity to the decrees relative to its institution, and qualified to exercise its functions agreeably to the constitutive act of the Mexican Confederation and other Federal laws relative to the union of the two provinces. It then proceeded to decree the State of Coahuilla and Texas to be an integral part of the Confederation; and to be free, sovereign, and independent in whatever related exclusively to its internal administration and municipal government agreeably to the constitutive act and the Constitution of the United Mexican States.

The judicial power of the new State was re-vested in the same authorities by which it was then exercised; and in the administration of justice they were required to be governed by the laws then in force. The whole scope and power of jurisprudence was lodged in a court called the *ayuntamiento*, which was composed of the *alcaldes*, the *sindicos* and the *regidores*, all of whom were elected

by the people on the first Sunday in December, annually, and entered on the discharge of their duties on the following Sunday.

The alcalde in his separate capacity combined the larger powers of our mayors and justices of the peace. The duties of the regidores assimilated to those of our aldermen, and the *sindicos* corresponded with recorders. These, sitting together, composed the *ayuntamiento*, which had jurisdiction over the entire community. They were required to use staffs trimmed with black tassels as badges and distinctions of office; and every town with one thousand inhabitants was entitled to have one of these courts, and this privilege was extended to all new towns of two hundred inhabitants, provided that there was no *ayuntamiento* already established within eight leagues.

These courts being of popular creation were not oppressive, and, possessed of unbounded judicial power they protected the interests of society until the introduction of military garrisons, in consequence of the discontent occasioned in Texas by its connection with the trans-Rio Grande province of Coahuila and its subjection to the distant capital at Monclova.

Upon the abuse of power by the *ayuntamiento*, or by any of the judges or officers of that court, they were liable to be suspended by the Governor, with the advice and consent of his council, and he was required in that case to report the circumstances to the constituent Congress; and in order to facilitate the dispensation of justice every citizen when chosen and having, in the opinion of the alcalde, no legal disqualification, was obliged to serve as a colleague judge in the inferior courts.

By a decree of Congress, made in April, 1834, Texas was formed into a separate judicial district and a court established denominated "The Superior Judicial Court of Texas." The three departments, Bexar, Brazos and Nacoydoches constituted, respectively, three separate circuits, and the Superior Court was composed of one superior judge, one secretary, and a sheriff for each department, and in criminal cases it comprised a jury and prosecuting

attorney. This court held its sessions every four months at the capitals of the respective districts; and for the trial of civil cases there was in every municipality an inferior court held by the *alcalde* or justice of the peace with the aid of a jury. All causes, civil and criminal, were, with some limitations, triable by jury, which was chosen and impaneled in a manner similar to that in practice under the common law; but it required the agreement of only eight of the twelve jurors to form a verdict. The panel was composed of thirty-six persons, from whom twelve competent jurors were chosen as prescribed by the common law; and for the formation of juries in criminal cases all the *ayuntamientos* of the district were required to send up every year to the *ayuntamiento* located at the capital a list of all citizens of their respective municipalities who were qualified to serve as jurors. These names were placed in a box and the secretary, in the presence of the court, drew out a number which, being multiplied by the number of municipalities, should not be less than thirty-six, and these names were given to the subaltern sheriffs who summoned the persons to appear at the capital at the session of the superior court. These ceremonies were all conducted in secret and the names of the persons were not divulged until they were sworn. All the officers connected with the proceedings, as well as the persons summoned, were enjoined to maintain the strictest silence under penalty of the guilt of *falsehood*.

The superior judges were required to be citizens in the exercise of full rights; to be lawyers by profession, and men of probity and science. They were appointed by Congress upon the nomination of the Governor, and could not be removed from office except for sufficient cause legally manifested and proven.

The *alcaldes*, or primary judges of the municipal capitals, were by virtue of their office judges of inquiry and police, and were capable of the prompt investigation of crime and the apprehension of criminals.

The juries were judges of all the facts in controversy, and of the law in regard to evidence under the instruction

of the court, but they were not obliged to conform their opinion to his views as to its weight and import; as to all other questions of law they were to be governed by his interpretation of their tenor. The facts established by the decision of the jury were considered conclusive, and could not be controverted before any tribunal, except in case of corruption.

In all criminal cases the accused were allowed to except peremptorily and without assignment of reason to twenty individuals of the panel. Objections for cause were numerous and the list of disqualifications extensive. Criminal trials were divided into three parts, termed *verbal*, *sumario* and *plenario*. The verbal method was employed for the correction and punishment of slight offenses. The trial *sumario* furnished process for the prompt investigation of crime, and for the discovery and arrest of the criminal, and the trial *plenario* provided means for the final resolution of the case and the application of the penalty.

All infringements of police regulations, contempt of process, and slight infractions of law for which the penalty did not exceed a fine of ten dollars or three days' imprisonment were punished by verbal determination of the judge.

By the trial *sumario* the nature of a crime was ascertained and decided, the author discovered and arrested and sent, together with all the circumstances in writing, to the alcalde of the capital of the district; and from him an appeal lay to the Superior Court, which subjected the appellant to the trial *criminal plenario*. In this court the case was tried *de novo*, and the accused could obtain process to bring in all his witnesses. He was furnished with a copy of the accusation sent up from the lower court, and with a list of the witnesses who would be summoned on the part of the State. He was permitted to be confronted by them, and, by his copious right of exception, participated in the formation of the jury.

The opening of the sessions of the Superior Court were verified by acts of punctillious solemnity. All of the officers of the court and of the district were required to be present and arranged in a ceremonious manner. The judge

opened the court with a discourse suitable to the occasion and directed chiefly to the instruction of the inferior judges and other officers of justice in regard to their duties and obligations; and at the conclusion of his admonitions they retired to their respective jurisdictions, and the court proceeded to the dispatch of criminal causes according to their grade and the order of their dates. After the examination of the witnesses both directly and in a cross manner, the *sumario* prepared by the primary judge was opened and read, upon which further testimony was admissible. This being concluded, both parties were required to plead verbally in establishment of the accusation and defense, after which the jury retired for deliberation. The verdict agreed upon by two-thirds of the jurors was reduced to writing, with all the reasons and circumstances which conduced to the conclusion, and the minority were permitted to express their separate dissent in like manner.

From the final sentence pronounced in the trial *criminal plenario* the only recourse for relief was the appeal of *nullity*. This appeal was required to be made within eight days, upon which the court transmitted a copy of its proceedings to the Supreme Court of the State, which confined itself to the review of the trial in the lower court. This appeal could be sustained by proof of the bribery of a juror, or other gross misconduct, or by a misapplication of the law to the facts established by the jury, and in the latter case the proper sentence was passed in the appellate court.

In all civil demands and claims for personal injuries the *alcaldes* were required to act as conciliators, and if possible to effect a settlement of the matter by arbitration; and in all written petitions, in the institution of actions, the plaintiffs were required to certify that they had attempted in vain a reconciliation with the opposite party.

Neither of the parties to a suit was permitted to present but two written promotions of his cause. These were: the petition, answered by the *replica*, and the *contestacion*, parried by the *duplica*. The proceedings in regard to executions and sales were similar to those now in practice, but

no *supersedeas* intervened during an appeal to the trial *civil plenario* in the Supreme Court from the ruling of the court below upon the exceptions taken by the defendant to the sale of the property under the execution. The investigation of these exceptions was called the trial *executive*.

The proceedings in the Supreme Court were conducted with the most dignified solemnity, and the etiquette observed was impressive. The judge was required to dress himself in black, or dark blue, and wear a white sash with gold tassels. However superfluous and absurd these formalities may appear in this age of reason and practicability, it must be remembered that among a people like the Coahuilteans, little inured to any fixed and regular restraint, fanaticised by their religion, and often beyond the reach of justice in the vast regions they inhabited, respect and obedience are largely attracted by a display of power and the glitter of appearance. By the Constitution adopted in 1827 this system was planted in the organic law.

The land commissioner, an officer appointed by the Governor, under the colonization laws of Coahuila and Texas, was a functionary possessing important powers. He was required to examine scrupulously the certificates of qualification for citizenship which all emigrants were required to bring from the authorities of the place from whence they came, to prove that they entertained the Christian faith and were of good moral character, without which requisites they could not be admitted to citizenship in the colony. He administered to them the oath of allegiance, issued titles in the name of the State to the lands which every qualified settler was entitled to receive from the government, caused all such lands to be surveyed and established by proper metes and bounds, taking care that there should be no conflict of titles. He laid out new towns, organized new *alcalde* districts, established ferries, presided at the election of the judges and other officers of the courts of *ayuntamiento*, inducted the new officers, and in conjunction with the *impressario*, or contractor of emigration, exercised a general supervision over the affairs of the colonies. The lands granted by the commissioner

were held under a contingent title, which could only be perfected by putting them in cultivation within the space of six years; and lands thus acquired could not be alienated by the original settler until his title was made perfect. The alienation of those obtained by purchase from the government was coupled with the condition that the successor should cultivate them within the period obligatory upon the original proprietor, and any occupant could devise his possession conditioned upon the fulfillment of his obligations by the heir.

Lands acquired by virtue of this law could not under any circumstances be transferred in mortmain or entail, and the general rules of inheritance were applied in all cases of intestacy. All public grants made to heads of families, whether to the husband or wife, constituted a community of interest between them, and inured equally to the benefit of both, and this jointure was maintained as to all property acquired during coverture, whether by purchase, by public grant, or by inheritance, if from a child or any person of equal degree of consanguinity to both.

These qualifications of public grants, the rules regulating marital rights, and descent and distribution, descended to the Texas Republic and were modified only by the gradual introduction and amalgamation of the common law in its system of jurisprudence.

CHAPTER III.

ORIGIN OF TEXAS JURISPRUDENCE — THE JUDICIAL ORDINANCES OF THE CONSULTATION AND PROVISIONAL GOVERNMENT — THE JUDICIARY SYSTEM OF THE TEXAS REPUBLIC — INTRODUCTION OF THE COMMON LAW AND THE CIVIL CODE OF LOUISIANA — OBSERVATIONS — LEGISLATIVE MODIFICATIONS — 1835-1845.

The first system of jurisprudence organized in Independent Texas was derived in part from the same Spanish source as that which had hitherto existed. The Texas legislators recognizing the increasing demands of society for a more cultured and efficient system of judicature than that which existed in the old Mexican State, sought for a higher standard and a more perfect model as a basis for the jurisprudence of the New Republic, and turned their attention in the direction most accessible to their purpose.

The Civil Code of Louisiana had been greatly improved by statutory enactments, and by the laws of the Spanish Partidas compiled in imitation of the Pandects, but which were proclaimed by the most learned civilians to be far superior to the general rules and abstract maxims of the Roman Code. Indeed the pliancy and practicability which they inspired into the body of the civil law were claimed to be as great an improvement upon that system as that which the commentaries of Littleton, Blackstone and Coke produced upon the common law of England. The Legislature of Louisiana caused a portion of these laws to be translated in 1819, and introduced them as far as they were applicable into the jurisprudence of that State.

This improved system was likewise adopted in part by an ordinance of the Provisional Government of Texas in 1835, which ordained that the "Civil Code" and "Civil Practice" of Louisiana should be the rule in all cases of sequestration, attachment, or arrest, and should regulate these writs in form and effect. The same ordinance also

decreed that in all criminal cases and writs of *habeas corpus* the proceedings should be regulated and conducted under the rules and upon the principles of the common law of England. All trials were required to be by jury, except in cases of impeachment, and all penalties inflicted were made to conform to those prescribed in like cases by the common law.

A provisional judiciary was instituted in each jurisdiction represented, or which might thereafter be represented, in the House of Consultation, to consist of two judges, designated respectively the first and second judge, and the latter was to act only during the absence or disability of the former. These judges were to be nominated by the Council and commissioned by the Governor.

Every judge thus nominated and commissioned was empowered with jurisdiction over all crimes and misdemeanors known to the common law of England. They had power to grant writs of *habeas corpus* under the rules of the common law, and writs of sequestration, attachment, or arrest, under the regulations of the civil law. Their powers extended to the cognizance of all matters testamentary. Their courts were repositories for deeds of conveyance and all other matter of record, and they were *ex officio* notaries in their respective municipalities.

All commissions were made "In the name of the People, free, and sovereign," and every officer of the Provisional Government was required to take and subscribe the following oath as a necessary qualification for office: "I do solemnly swear that I will support the republican principles of the Constitution of Mexico of 1824, and obey the declarations and ordinances of the Consultation of the chosen delegates of all Texas in General Convention assembled, and the ordinances and decrees of the Provincial Government, and I will faithfully perform and execute the duties of my office agreeably to law, and to the best of my abilities; so help me God."

This simple system obtained but one year — from November 1835, to the meeting of Congress in December 1836 — when it was superseded by the intervention of the

laws which were immediately made in pursuance of the Constitution. This instrument greatly enlarged the existing body of jurisprudence. It vested the judicial powers of the Republic in a Supreme Court and in such inferior courts as the Congress might, from time to time, ordain and establish. It divided the Republic into judicial districts, which were to be not less than three, nor to exceed nine; and provided for a judge for each district. It gave these courts exclusive original jurisdiction over all questions in admiralty and of a maritime character, in all cases affecting ambassadors, public ministers, or consuls; and in all capital cases; and conferred upon them original jurisdiction in all civil cases when the matter in controversy amounted to one hundred dollars. The district judges were empowered to conserve the peace throughout the Republic. It fixed the style of process to be "The Republic of Texas," and required all prosecutions to be conducted in the name and by the authority of the Republic, and to conclude against its peace and dignity.

The chief justice with a majority of the district judges, as associates, sitting in banc, constituted the Supreme Court of the Republic. This court possessed only appellate jurisdiction, which was conclusive within the limits of the Republic. It was to hold its sessions annually at such times and places as might be fixed by law, and no judge was permitted to sit during the trial of any case in which he had participated in the lower court. The judges of both the Supreme and District Courts were made elective by joint ballot of the two Houses of Congress. The Supreme Court of the Republic, thus vested with unlimited appellate jurisdiction, was perhaps the most comprehensive and independent tribunal that ever sat upon the bench of justice.

The Constitution of the Republic also required that a court should be erected in every county to be called the County Court, which was to be held by the justices of the county, who were to be commissioned by the President in such numbers as, in the opinion of Congress, the exigencies of law and order might require.

It ordained that Congress should, as early as possible,

introduce by statute the common law of England, with such modifications as the circumstances of society, in their judgment, might require; and it reaffirmed the ordinance of the consultation, that in all criminal cases the common law should be the rule of decision. At this time the civil law of Spain was the common law of the land, and had fastened a firm grasp upon all tenures, upon descent and inheritance, and upon all marital rights; and to remedy the inconveniences and save the conflicts which would surely arise upon the introduction of the common law, it was declared in the schedule that all laws then in force in Texas, and not inconsistent with the Constitution, should remain in full force and effect until they should be declared void, repealed, altered, or expire by limitation.

This Constitution declared in terms of exact coincidence with the first Constitution of Mississippi, from which it was perhaps taken, that ministers of the Gospel, being, by their profession, dedicated to God and the care of souls, ought not to be diverted from the great duties of their functions; and that, therefore, no minister of the gospel, or priest of any denomination whatever, should be eligible to the office of the executive of the Republic, nor to a seat in either branch of the Congress.

This discrimination and exclusion, it must be observed, was ludicrously superpolitic; for it can not be conceded that there is less field for pastoral operations, or less need of ministerial services among congressional and legislative souls than those of other communities; but, on the other hand, human experience testifies that there is often great need of their presence and services among the souls of legislative assemblies.

The Texas Bill of Rights which formed a part of this Constitution is such as could emanate only from a free and liberty-loving people. It is similar to that of Virginia and other states which followed her immortal declarations. It looked neither to the common law for guidance on the one hand, nor to the civil law for light on the other; but it looked straight upward to the zenith of human liberty and human happiness.

Such were the organic provisions of the Consultation and the Constitution of the Texas Republic, in reference to the judiciary. It has been observed by a learned judge in phrase apparently trite, yet with vast depth of meaning, that laws should be understood in order to be obeyed. It may be said, too, with equal import that a comprehension of the machinery and character of those organized means of obtaining rights and repelling wrongs, which we call courts, should be within the reach of every citizen. The upright man should understand the unfailing methods by which his rights are protected or recovered, and the unjust should know the certainty of the machinery that will hurl a sure-footed retribution upon his track; and as the author has had occasion to remark in another work, the great danger in the establishment of the jurisprudence of a new and sparsely settled country lies in the effort to introduce complex systems of older commonwealths. Perfect laws do not spring forth from the fountains of wisdom like Minerva from the brain of Jove. The Confederate States present, perhaps, the only instance in the history of the world of a nation leaping from the womb of time clad in the full panoply of a perfect government.

The first Congress of the Texas Republic assembled in December, 1836, and proceeded to enact the requirements of the Constitution; and, by act of December 20, declared that the common law of England, as there practiced and understood, should, in its application to juries and evidence, be followed by the courts of the Republic, so far as it might not be inconsistent with that act or any other law of Congress. On the 20th of December, it was enacted that the penalties of all offenses known to the common law of England, as then understood and practiced, and not otherwise provided for by the act, should be the same as prescribed by that law; and by the act of January, 1840, it was ordained that the common law of England, so far as it was not inconsistent with the constitution and acts of Congress, then in force, should, together with those acts, be the rule of decision in all the courts of the Republic. But the act of February, 1840, declared that the adoption of the common law should

not be construed to introduce that system of pleading, but that the proceedings in all civil suits should be conducted as before — by the civil law method of petition and answer, involving as many issues of law and fact as the parties might choose to rely upon; and this mixed and excerpted system in which the civil law governs the pleadings, while the common law furnishes the rule of decision, still obtains in Texas jurisprudence. At the session of 1840 it was also enacted that all laws in force in the Republic prior to the 1st of September, 1836, except the statute laws then in force, and except the Mexican laws, which related exclusively to grants and the colonization of lands in the State of Coahuila and Texas, and also such as related to the reservation of islands, lands, salt lakes, licks, salt springs, mines, and minerals of every description, were repealed. This act, save in regard to the subjects excepted, rooted out the Spanish-Mexican laws from the country, and removed most of the obstacles in the way of the adoption of the common law, which now, mingling with the statutes which sprang from the civil law, created that beautiful mixture of the best features of both systems, which gives to the jurisprudence of Texas a certainty and swiftness in the pursuit of right which no wrong can baffle.

In the formation of the constitutions of the Provisional Government and Republic, there were two parties in Congress — one composed of emigrants from the common-law States of the Union, which favored that system, and the other composed of native Texans and emigrants from Louisiana, who contended for the civil law. The system adopted was a compromise between the two, and this finally rested upon equity as a basis.

So averse was Congress to any fetters of formality in the pursuit and administration of justice, and so impressed was it with the civil-law maxim — *res adjudicata pro veritate accipitur* — that soon after the passage of the common-law act of 1840, it enacted that the fictitious proceedings in the action of ejectment should be abolished, although it had never been a remedy in the republic, and that the method

of trying title should be by action of trespass, in which the real names of the parties should be used; and in order to apprise the defendant of the nature of the suit, the plaintiff was required to indorse on his petition that the action was brought as well to try the title as for damages.

Proceeding with the organization of the courts in compliance with the provisions of the Constitution, Congress, at its first session in 1836, established in each county a county court with original and concurrent jurisdiction with the District Courts over all suits and actions in which the amount in controversy exceeded one hundred dollars, but forbade that it should try any suit relative to the title of land; and from this court an appeal lay to the District Court, when the amount in controversy exceeded two hundred dollars. In the organization of this court Congress created the office of chief justice of the county, an officer not provided for by the Constitution, and enacted that one of the justices of each county should be commissioned as such by the President. The constitutionality of the office was held to be valid, but the Supreme Court deprived the President of the power of appointment, as being unconstitutional, and the office was made elective by the justices of the county.

The chief justices of the County Courts were clothed with the powers of probate in their respective counties, and there was an unlimited appeal from them in this capacity to the District Courts.

The County Courts had appellate jurisdiction over all cases arising in the justices' courts, and these were tried *de novo* without the intervention of a jury. Indeed, the County Courts had the same relation to the counties as the Supreme Courts had to the Republic.

By the act of January, 1839, that portion of the act of December, 1836, conferring jurisdiction upon the County Courts, was repealed, and their original functions limited to the exercise of the powers of probate, the conservation of the peace, the supervision of roads and revenues, and to notarial matters, and, save which, all their former jurisdiction was transferred to the District Courts. But all appeals

from the justices' courts were still made returnable to the County Courts, in which they were to be tried *de novo* without a jury.

The act of December, 1840, empowered the chief justices of the County Courts to grant the same remedial processes in all matters originating in the justices' courts, as those issued by the district judges. But the act of February, 1844, prohibited the chief justices of the county, and the associate justices from holding the County Courts, severed the connection of the associate justices with the probate courts, and substituted a board of county commissioners, consisting of four members, who, with the chief justice, composed the County Court. These commissioners were by the act of February, 1845, made elective biennially by the people, and their courts confined to semi-annual sessions.

These provisions conclude the history of the judiciary system of the Republic. It had laid the foundation for a wise fabric of laws, had built the pillars of a great State, and out of the best material that could be procured, and was fully prepared to enter the rival lists for national greatness, and for a proud place among the nations of the world. But lured by these attractions a tide of emigration poured in from the States of the great neighboring Republic, and every emigrant formed a strand in the cable which was eventually to bind the destinies of the two countries. Closer and firmer was the tie drawn. Greater and more intensified became the attraction; until, wooed by its smiling glow, its kindred light, and its superior glare, the Lone Star ceased its solitary twinkle and fell into the great orb of the American Union.

CHAPTER IV.

ORGANIZATION OF THE TEXAS STATE GOVERNMENT — ITS JUDICIARY SYSTEM — THE BLENDED CHARACTER OF ITS JURISPRUDENCE — COMMON LAW, CIVIL LAW, AND EQUITY — ITS CRIMINAL CODE — PECULIARITY OF ITS LAND LAWS — MARITAL RIGHTS — RULES OF INHERITANCE — HOMESTEAD AND EXEMPTION LAWS — LIBERAL EDUCATIONAL SYSTEM — BENEFICENCE OF TEXAS JURISPRUDENCE. — 1845-1885.

On the 1st day of March, 1845, a resolution was adopted by the Congress of the United States expressing its willingness to receive the territory comprising the Republic of Texas as a new State in the American Union upon certain conditions, and authorized the President to negotiate with the Republic upon the question of annexation. In reply to this overture, the Texan Congress, by a joint resolution, on the 23d day of June, 1845, declared its consent that the people and territory of the Texas Republic might be erected into a new State, to be called the State of Texas, and annexed to the Union upon the terms offered by the United States Congress, and authorized the President of the Republic to proclaim an election of delegates to a convention to be convened at Austin on the 4th day of July. This convention ordained and declared, in the name of the people of the Texas Republic, and by their authority, that it accepted the proposals, conditions and guaranties offered by the United States Congress, and proceeded to form a constitution for the new State, which was adopted on the 27th of August.

This Constitution vested the judicial power of the State in one Supreme Court, in District Courts, and in such inferior courts as the Legislature of the State might from time to time ordain and establish, and authorized such jurisdiction to be vested in corporation courts as might be deemed necessary, and be directed by law.

The Supreme Court was made to consist of a chief justice and two associates, any two of whom formed a quorum. It was to have appellate jurisdiction only, which was to be coextensive with the limits of the State. The court, or any one of the judges, was empowered to grant writs of *habeas corpus*, and, under regulations prescribed by law, to issue writs of *mandamus* and all other writs necessary to enforce its jurisdiction and compel a judge of the District Court to proceed to trial and judgment in any cause pending in his court; and the court was required to hold its sessions once every year, at not more than three places in the State, to be designated by law.

In criminal cases and interlocutory judgments the extent of jurisdiction and the mode of exercising it were remitted to the regulation of the Legislature; and, as that body failed to make any provision in the matter, it was held that no appeal lay in these cases, and that they could be revised only by writ of error. But it was decided at a later day that the right of appeal flowed from a higher source than statutory enactments, and that the exceptions, notwithstanding the inaction of the Legislature, could not be construed to depend wholly upon legislation, and thus contravene the spirit of the Constitution. The act of 1846 removed the grounds of conflict, and provided for general appeals in criminal cases, except on the part of the State; but the code of criminal procedure subsequently gave an appeal to the State.

The judges of the Supreme and District Courts were nominated by the Governor, and were appointed by him with the advice and consent of two-thirds of the Senate, until an amendment to the Constitution, adopted on the 16th of January, 1850, provided for their election by the people.

The Constitution required that the State should be divided into convenient judicial districts, with a judge for each, who should reside in the same, and should hold his courts at one place in each county at least twice in every year, in such manner as might be prescribed by law. These courts were vested with original jurisdiction of all criminal cases, of

all suits in behalf of the State, to recover penalties, forfeitures and escheats; of all cases of divorce, and of all suits, complaints and pleas whatever, without regard to any distinction between law and equity when the matter in controversy amounted to one hundred dollars, exclusive of interest; and the district judges were empowered to issue all writs necessary to enforce their own jurisdiction, and to exercise general superintendence and control over all inferior jurisdiction. And in the trial of all criminal cases in the District Courts the jury was required to fix the amount of punishment to be inflicted, and to assess the fine to be imposed, except in capital cases, and those in which the punishment or fine was especially designated by law. In the trial of cases in equity it was provided that either party should have the right of trial by jury, upon making application for the same in open court, and the proceedings were in such cases to be governed by the rules and regulations prescribed in trials at law.

The Constitution required that a convenient number of justices of the peace should be elected by the qualified voters of each county, who should be commissioned by the Governor, and have such civil and criminal jurisdiction as might be conferred by law, and in these courts the right of trial by jury was vouchsafed in all cases in which the penalty was fine or imprisonment (except in cases of contempt); and in all cases an appeal lay to the court of the district.

It also provided for the establishment of inferior tribunals in counties, whose functions should be, the appointment of guardians, granting letters testamentary and of administration, the settlement of accounts of executors, administrators and guardians, and the transaction of all business appertaining to estates; and over all these matters the District Courts had both original and appellate jurisdiction.

In the formation of these provisions by law, the Legislature, by joint resolution on the 25th of April, 1846, authorized the attorneys of the plaintiffs or defendants, to file in the Supreme Court a written brief or argument which the judges were required to notice and treat as an

appearance; and by the act of the 12th of May the Supreme Court was prohibited from reversing on an appeal or dismissing any case for want of form, provided that there was sufficient matter or substance contained in the record to enable the court to decide the cause upon its merits; but if it was apparent that the appeal was taken for delay it should be dismissed; and if the appellant was the defendant in the court below, ten per cent on the amount claimed should be added as damages, in addition to the other costs.

This act also afforded relief to any person who by accident or mistake had failed to file in proper time a transcript of the proceedings in the court below, by providing that it might be filed upon certain conditions, and the cause tried upon its merits at any time during the term to which the appeal was returnable, even after the judgment of the lower court had been affirmed. The appellee was not required to file any answer to the assignment of errors or defects insisted upon by the appellant. It was sufficient if he filed a brief of his argument and the authorities on which he relied. All appeals were required to be tried upon a statement of facts agreed upon by the parties or their attorneys, and accompanied by a certificate of verity from the lower court, or, if the parties could not agree upon the facts as certified by the judge, or on a bill of exceptions; or on a special verdict, or on an error of law either assigned or apparent on the face of the record. In the absence of all these grounds, the case was to be dismissed upon terms within the discretion of the court. By the act of the 30th of November, 1850, the Supreme Court was required to hold one session in every year in the City of Austin, one in the City of Galveston, and one in the town of Tyler; and the court while sitting at either of these places had power of revision over those appeals only which came up from the districts assigned to its jurisdiction; but if any cases argued or submitted were left undecided at the close of the term, it was competent for the court to decide it at the ensuing term, held at either of the above places, and the

judgment was transmitted for record to the place where the case was submitted.

The Legislature, by the judiciary act of 1846, authorized the district judges to issue all remedial writs either in vacation or during the sessions of the courts without limit or qualification, except writs of *mandamus*, which could not be granted *ex parte*, nor, if peremptory, without due notice; and they could be issued to an officer only in regard to duties purely ministerial, and which did not require the exercise of judgment and discretion. In addition to an unlimited original jurisdiction in all civil cases in which the amount in controversy amounted to one hundred dollars, they were clothed with all the powers incident to courts of oyer and terminer and general jail delivery.

All suits in the District Courts were by this act to be begun by petition, which should be without distinction as to law or equity, and which should set forth all the allegations necessary to sustain the suit, together with a full statement of the nature and measure of relief desired. The defendant in his answer could plead as many matters either of law or fact as he might deem necessary to his defense.

The act of 1848, organizing justices' courts pursuant to the requirements of the Constitution, conferred upon them jurisdiction and power in civil cases co-extensive in every particular with the District Courts when the amount claimed or the damages sought to be recovered did not exceed one hundred dollars; but they could not determine finally any offense if a deadly weapon was used or attempted to be used. They could grant new trials upon certain conditions, and were required to have all cases tried by a jury in which more than ten dollars were involved.

The act of 1856 legalized the use of the Spanish language in justices' courts in all counties west of the Gaudalupe River, except Nences, San Patricio, and Refugio, when neither the justice or the parties understood the English language; and when in any case either of the parties spoke the English language alone, of which the justice was ignorant, the suit could be removed to the court of the nearest justice who was conversant with that language.

The act of March, 1848, organized in every county of the State a county court, composed of one chief justice, to be elected by the people, and gave to it general jurisdiction over the police affairs of the county. These courts were empowered to take probate of wills, to appoint guardians, and to take jurisdiction over all matters testamentary and of administration, to supervise the accounts of executors, administrators and guardians, and to make settlement, partition and distribution of the estates of deceased persons, idiots, lunatics, and of persons *non compos mentis*, which they were required to exercise in the manner prescribed by law. This jurisdiction superseded the powers granted to the judge of probate in each county by the act of 1846. It absorbed and consolidated the former probate system, and all acts conferring conflicting cognizance were repealed.

These courts were also authorized to levy and collect a tax for county purposes and to exercise the functions of land commissioners.

In August, 1856, the Legislature created a court of claims, to be held in the City of Austin by a commissioner elected by joint vote of the two houses, whose duties were to ascertain the legality of all claims for money or land against the State. He was also to act as adjutant general, commissioner of the general land office, and also perform the duties of an auditor. In 1858 the duties and functions of his office were transferred to the controller, but the court was revived by the act of 1860.

The Constitution of 1866 made but few changes of importance in the judiciary system of the State. Its amended features pertained chiefly to the re-establishment of the allegiance of the State to the Federal Union, upon the terms and conditions prescribed by the United States Congress. It vested the judicial power in one supreme court, in district courts and in county courts, and such inferior tribunals as the Legislature might see proper to establish. It authorized the organization of criminal courts in the chief cities of the State, with county jurisdiction, under such regulations as might be prescribed by law; and any judge

of one of these courts might preside over the criminal courts of other cities as the Legislature might direct.

The number of supreme judges was increased to five. They were required to be more than thirty-five years old at the time of their election. Their tenure of office was fixed at ten years, and their annual salary was not to be less than four thousand five hundred dollars. The Supreme Court was authorized to ascertain, by affidavit or otherwise, as it thought proper, such matters of fact as might be necessary to the exercise of its jurisdiction.

The district judges were to be elected for the term of eight years, and should receive an annual salary of not less than three thousand five hundred dollars. They were to have original jurisdiction over all criminal cases, of all suits in behalf of the State, and of all suits, complaints or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy should be valued at, or amount to, one hundred dollars exclusive of interest; and in all cases, either of law or equity, involving matter to the amount of twenty dollars, the right of trial by jury was to be preserved.

In addition to the probate and police powers of the existing County Courts they were vested with jurisdiction over all misdemeanors and petty offenses, as defined by law, and over all civil cases, without distinction of law and equity, in which the amount claimed should not exceed five hundred dollars exclusive of interest, which was to be exercised under such regulations, limitations and restrictions as might be prescribed by law.

The Constitution of 1875 greatly enlarged and expanded the judicature of the State and prescribed the establishment of that efficient, harmonious and beautiful system which now characterizes the jurisprudence of Texas. The judicial power of the State is vested in one supreme court, in a court of appeals, in district courts, county courts, commissioners' courts, in courts of justices of the peace, and in such others as may be established by law.

The Legislature is authorized to establish criminal district courts, with such jurisdiction as it may prescribe, provided

that the district contains a city of thirty thousand inhabitants, which shall support the court.

The number of Supreme Court judges is reduced to three—one chief justice and two associates—who are elected for six years by the people, and their qualifications are that they shall have attained the age of thirty years, shall have been practicing lawyers at the bar of the State, or shall have been judges of some court in the State, or, both together, at least seven years, and their annual salary is limited to thirty-five hundred and fifty dollars each.

The Supreme Court has appellate jurisdiction only, which is co-extensive with the limits of the State; but it extends only to civil cases of which the District Courts have original or appellate jurisdiction; and it has power to make rules and regulations for the government of all the other courts of the State, and to regulate their proceedings.

The Court of Appeals consists of three judges, any two of whom constitute a quorum, and the concurrence of two of the judges is necessary to form a decision. Their tenure of office, mode of election, qualifications, and compensation are the same as those of the judges of the Supreme Court.

This court has appellate jurisdiction co-extensive with the limits of State in all criminal cases, of whatever grade, and in all civil cases unless otherwise provided by law, of which the County Courts have original or appellate jurisdiction. This court, or its judges individually, may issue writs of *habeas corpus*, and all other writs, under regulations prescribed by law, that may be necessary to enforce its own jurisdiction; and the court is required to hold its sessions during the same time and at the same places designated for the terms of the Supreme Court, and like that court it may exercise discretionary power as to the manner of ascertaining facts necessary to establish its jurisdiction.

The State is divided into twenty-six judicial districts, in each of which there is a district judge elected by the people for a term of four years, who shall have attained the age of twenty-five years, who shall have been a practicing attorney or a judge of some court in the State for the period of four years, and who shall have been a resident

of the district for two years antecedent to his election. The district judges are required to hold regular terms of their courts at one place in each county of their respective districts twice in every year, and to each of them is assigned an annual salary of twenty-five hundred dollars.

The District Courts have original jurisdiction in all criminal cases of the grade of felony, and of all suits, complaints and pleas whatever, without distinction between law and equity, when the matter claimed or involved in the controversy exceeds in value or amount the sum of five hundred dollars, exclusive of interest; and the courts or the judges may issue writs of *habeas corpus* in felony cases, also the writs of *mandamus*, injunction, *certiorari*, and all writs necessary to enforce their jurisdiction. These courts have appellate jurisdiction and general control in all probate matters over the County Courts, and original jurisdiction and general control over executors, administrators, guardians and minors, under such regulations as are, or may be, prescribed by law; and in the trial of all causes in the District Courts, whether founded upon law or equity, either party to the suit may, upon conditions, have his cause submitted to a jury.

The County Courts are presided over by county judges elected by the people for the term of two years. They are required to be well informed in the law of the State, and receive for their services such fees and perquisites as may be prescribed by law.

These courts have original jurisdiction of all misdemeanors, of which exclusive jurisdiction is not assigned to the justices' courts, and when the fine to be imposed exceeds two hundred dollars; and they have exclusive original jurisdiction of all civil cases involving more than two hundred dollars and not exceeding five hundred, exclusive of interest. They have concurrent jurisdiction with the District Courts in all cases in which the matter involved is more than five hundred, and not more than one thousand dollars; but they have no jurisdiction of suits for the recovery of land. They have appellate jurisdiction in all cases, civil or criminal, arising in the justices' courts, provided that in

civil cases the amount of the judgment appealed shall exceed twenty dollars, exclusive of costs. All appeals are tried *de novo*, and if the judgment be for a sum not exceeding one hundred dollars it is final; but if it be for more than one hundred dollars an appeal lies to the Court of Appeals.

These courts have also general powers of probate, and the county judges have power, either in term time or vacation, to issue writs of *habeas corpus* and all other remedial writs when their subject-matter or operation is within the jurisdiction of the court. They are required to hold a term for civil business at least once in every two months, and a term for the disposition of criminal cases once in every month; but they can dispose of probate matter either in term time or vacation. All indictments for misdemeanor found by the grand juries in the District Courts are to be certified to the County Courts if the jurisdiction of the case resides in them; and all cases in the County Courts may be tried by a jury of six men upon conditions to be complied with by the party demanding it.

Each county is required to elect four county commissioners, who, with the county judge as presiding officer, have general police supervision of the county, and provide the required precincts for the election and jurisdiction of the justices of the peace. The latter have jurisdiction in all criminal matters in which the penalty or fine does not exceed two hundred dollars, and of all civil cases with like limitation of the amount involved, of which exclusive original jurisdiction is not given to the District or County Courts.

This system, which forms a part of the present organic law of Texas, not only furnishes ample and efficient machinery for the accomplishment of the object of all good governments—the protection of life, liberty and property; but its various jurisdictions are so distinctly defined and so admirably adjusted that every relation of society can be readily assigned to the province of justice best adapted to its needs.

In view of the large accumulation of business in the

Supreme Court and Court of Appeals, and to afford facility for the utmost expedition in those tribunals, the Legislature in July, 1879, established a commission of arbitration and award consisting of three persons learned in the law, and to be appointed by the Governor by and with the advice and consent of the Senate. This Court, styled by the act "Commissioners of Appeals of the State of Texas," is required to hold its sessions at the same times and places as the Supreme Court. It had power under the creative act to pre-judge and pronounce award upon all civil cases pending in or brought up to the Supreme Court or Court of Appeals, of which the parties interested, or their attorneys, might give consent in writing to the arbitration; and it was required to report its conclusions and awards to the court from which the cases were taken in commission, accompanied by a brief synopsis of the case and the facts which formed the basis of its opinion, and this became the judgment of the court.

The acts of February, 1881, and March, 1883, authorized the Supreme Court and Court of Appeals to refer any civil cases to the Commissioners of Appeals without reference to the consent of the parties, and made it their duty to do so when necessary to promote an early disposition of cases pending before them. The opinions of the commissioners, when adopted by the court to which they are reported, are to be the published opinions of the respective courts. The Commissioners Courts are to be governed by the same rules and regulations that obtain in the Supreme Court. They may issue writs of certiorari in order to perfect their records, and they may punish for contempt. The commissioners hold their office for two years, and receive the same compensation as the judges of the Supreme Courts.

The introduction of the common law of England as to crimes, penalties, juries, evidence, and the writ of *habeas corpus*; and the adoption of the civil code and practice of Louisiana in regard to successions and remedial writs, have already been mentioned in the chapter devoted to the jurisprudence of the Texas Republic. The character,

growth and development of this mixed and excerpted system will now claim attention.

The entire system of Texas civil jurisprudence is founded chiefly upon principles of equity. The adoption of the common law by the act of 1840 as the law of the land, in conjunction with the ordinances of the Consultation and Provisional Government, and the acts of the Texas Congress then in force, in no manner disturbed the foundation upon which those acts and ordinances rested. The laws and institutions of the State of Coahuila and Texas being colored, more or less, by the tenets and precepts of the Catholic religion, and being written in a foreign language, were distasteful to the people who had emigrated from the United States, and formed a large majority of the population of the Texas Republic. These laws, except such as related to land grants and reservations, were, as has been remarked, entirely abolished by the act of 1840; and such as remained unrepealed prior to that time continued to be confined to their original scope, and to bear the crude stamp of their Mexican origin. They formed no basis for the statute laws of the Republic. It is true that an analogy was maintained between them, but only such as was necessary to prevent the inconvenience and conflict which must always arise from sudden changes of law in regard to tenures, inheritance and vested rights.

The Texas legislators being thus untrammelled by vassalage to any system, and being free to weigh the truth of precedent, and to judge of the soundness of mouldy maxims and antiquated principles, were guided alone by that philosophy which, in their opinion, formed from broad and unbiased views, was best calculated to promote the interest and welfare of society. They revised, in a measure, both the common and the civil law, and plucked such features and rules of conduct from each system as they deemed perfectly adapted to the best regulation of society, and to the most perfect adjustment and protection of individual rights.

They rejected the idea of separate courts of chancery, clogged with their antiquated forms and ceremonies, and

harnessed the whole system of equity to the simple machinery of law. Yet, strange as it may seem to a lawyer of the old school and orthodoxy, its scope and efficiency are in no wise restrained by the association; but, while it traverses concurrently with law the entire field of legal rule, it reaches its arms beyond the scope of the *strictum jus* of law, and seizes upon every artifice of cunning and deceit, parries the *vis major* of every event of accident and misfortune; and embraces every civil right and civil wrong which find cognizance at the bar of human reason. Thus elevated above the crude and confused administration upon principles of imaginary conscience and supposed right, which characterized its subserviency to the rules of law, the equity of Texas jurisprudence sheds a benign influence upon every feature of society, and opens the door of justice to all the multiplied concerns of life.

The act of 1840 especially excepted the application of the common-law rules of pleading to procedure in the Texas courts, and the civil-law methods by petition and answer in the mode still used in Texas judicature. The petition must set forth clearly, and in a logical and legalized form, without distinction of law and equity, the facts constituting the cause or action. The answer must in like manner present the grounds of defense, and may join as many issues of law or fact as the circumstances of the case will permit. It is not necessary for the plaintiff to deny any special matter of defense pleaded by the defendant, it being regarded as denied unless expressly admitted; but when the defendant sets up a counter-claim, the plaintiff may answer in capacity of defendant, under the rules prescribed for defensive matter. The plea of reconvention, or counter claim, was obtained from the civil law, and it may be set up in all actions except those for unliquidated damages founded upon tort or breach of contract.

The fictions of the common-law action of ejectment are unknown to Texas jurisprudence, and the method of ascertaining title to realty is by an action of *trespass to try title*. This action may be accompanied and abetted by the civil-law writ of sequestration, which puts in issue the right of

immediate possession. This writ delivers the property, whether real or personal, into legal custody, subject to replevin, until the title or right of possession is determined. It may, upon proper affidavit, be issued to protect the property of married women during suits for divorce, pending the suits for either the title or possession of personal property, and for the foreclosure of mortgages. It may also be issued to preserve property for the satisfaction of debts not due, if the affidavit of the plaintiff shows it to be necessary. It may be issued by any judge or justice of the peace, at the beginning or during the progress of the trial at any time before final judgment. But it can not be issued in any case until the party seeking the remedy makes an affidavit in writing that he is the owner of the property upon which he invokes the operation of the writ, or of some interest in it, and is entitled to its possession.

Common-law process has never been in use in the Texas courts, and the introduction of common-law terms did not always import the rules of that system as to the matters in regard to which those terms are used; hence the term *scire facias* is often used in reference to mere notice. Nor does the writ of *certiorari* possess here entirely the same features which characterize it under the common law. It is not considered a writ of right; but rests solely in the discretion of the court, to be exercised upon principles of equity, except when it is invoked within two years by persons interested in the estates of decedents, or by those who have within that time been relieved of disabilities, to revise in the District Courts the probate proceedings of the County Courts.

The rules regulating marital rights in Texas are of civil-law origin. The community interest subsisting between husband and wife, in all property acquired during coverture, except by gift, devise or descent; the preservation of the separate interest of each in all property owned by either prior to the time of marriage, with the entirety of the community property to the survivor, or survivorship of one-half of the ganancial estate, if there be children; the descent to the survivor of one-third of the separate personalty of either in fee simple, and one-third of the

separate realty for life, constitute a system of distribution far more provident and equitable than the antiquated common-law devices of dower and curtesy.

The common-law rule of inheritance established in Shelly's case never operated upon Texas jurisprudence. Every owner of property is considered a purchaser. There is no distinction made as to its source; and no person not in being at the death of the testator, except children and lineal descendants, can partake of the right of inheritance. The statute of descent and distributions follows rather the precepts of the civil law in determining both the nature of devise and the line of descent; but degrees of consanguinity are ascertained and reckoned by the rules of the common law, and no marriage agreement can change the order of descent.

The Spanish law would not permit a testator to dispose of more than one-fifth of his property adversely to his heirs and lineal descendants or ascendants; and this law, with the disposable portion increased to one-fourth, was of force in Texas until the passage of the act of 1856, which abolished the doctrine of forced heirship and permitted all persons to dispose of their entire property, either by will or otherwise, in any manner they might deem proper.

Neither the civil nor the common law permitted the possession of liberty or property exempt from the claims of creditors, and it was not until the enlightenment and humanity of the present age cried out against its barbarity, that imprisonment for debt has been abolished in most, if not in all civilized countries. But this emancipation from its rigors extended no further. While it could no longer gather its victims into debtors' jails and leave them to languish and die in loathsome dungeons, it had universal power to seize upon the last necessary of life, and reduce them to utter destitution and starvation, with a claim upon every morsel of subsistence they might acquire. And while the cruel practice of this atrocious doctrine shocked the humane sensibilities of the philanthropic world, nothing was devised to remedy so great an evil. No statesman dared to encounter the strength of a custom which had existed

from time immemorial, until the Congress of the Texas Republic, springing into life, freed from every shackle of false philosophy, enacted a law in 1839, exempting and reserving to every citizen or head of a family in the Republic, free and independent of the power of any writ of *fieri facias*, or other execution, fifty acres of land, or one town lot, including his or her homestead, with improvements to the value of five hundred dollars; household and kitchen furniture not exceeding in value two hundred dollars; implements of husbandry to the value of fifty dollars; all tools, apparatus, and books, belonging to the trade or profession of any citizen; five milch cows, one yoke of work oxen or one horse, twenty hogs, and provisions for one year. This generous act shook the maxims of antiquity, startled the State governments of the American Union, and they hastened one by one to follow the benevolent example. It drew many a steady yeoman from the States who sought to place his wife and little ones under its protecting ægis, beyond the reach of fickle fortune and overwhelming fate.

This act was the forerunner and foundation of the still more bounteous and munificent law organized and embodied in the organic system by the Constitution of 1845, which increased the homestead exemption to two hundred acres of land, or, if a town lot, to two thousand dollars in value, made it inalienable by the husband without the wife's consent, and incapable of being incumbered by ordinary liens.

The present Constitution, adopted in 1879, increases the homestead exemption, if consisting of a town lot, to the value of five thousand dollars at the time it was selected as a homestead, regardless of subsequent improvements or increased value, prohibits the partition of the homestead during the life of the survivor, so long as it is maintained as such, and so long as the guardian of the minor children of the deceased may be permitted to occupy it by the court having proper jurisdiction. The Constitution of 1879 also greatly enlarges the exemptions of the act of 1839 as to

personal property ; so that an independent means of subsistence is secured against accident, improvidence, or misfortune to every family in the State.

The land laws of Texas are of a complex and peculiar character ; and it would require a volume to trace the various features, changes and multiplied conditions, which have characterized title and the manner of acquiring it under the sovereignty and power of eminent domain exercised over the soil respectively by Spain, Mexico, Coahuila and Texas, the Republic, and State. This work can therefore embrace only a notice of the chief features and peculiarities of the land laws which have existed at different times since the Texas Revolution, and of the system which now prevails in the State.

At the outbreak of the Revolution all land titles in Texas, which were not derived immediately from Spanish or Mexican grants, emanated from the deeds made by alcaldes and land commissioners under domain grants of the State to empresarios — persons who had contracted with the government to import into the country as many as two hundred families under the colonization laws of Coahuila and Texas, enacted in 1825. These laws were evidently acts of usurpation of a power which belonged alone to the national government. For the Mexican government possesses the right of eminent domain over the soil in all the States of the confederation, and the Mexican States are therefore mere creatures of the national government.

Prior to the acquisition of Louisiana and Florida the United States government did not exercise the right of eminent domain over any of the States and territories of the Union, except those portions which it had acquired by cession or purchase for national purposes. The right was originally vested in the States which created the Union, and they still retain it, except perhaps so much as is necessary to effectuate the judgments and execution sales of the Federal courts, tribunals which ought not to exist in the States, for the reason that to give effect to their proceedings they require virtual participation in a power sacred to the States, upon which their sovereignty rests, and which they can not

surrender to the Union, nor divide with it in any respect, or to any degree, without impairing all their other rights.

In regard to this power there is a curious decision in the case of *McMullen v. Hodge*, 5 Texas, 74, which declares that the power of eminent domain flows from the untrammelled will of the people, expressed in laws of their own making. With all due respect the author can not withhold his dissent from this definition. If this be true, all the teachings of reason and writers are false, and it would upset the whole theory of government. There can be no sovereignty without this power, and it must exist prior to any act of sovereignty. The sale of lands for taxes and under execution is an act of the untrammelled will of the people expressed in laws of their own making, in this country; but the power of eminent domain must pre-exist in order to give effect to both the law and the sale. Strip the quality of lord paramount of the soil from the Czar of Russia and every jewel in his diadem would fall to the ground. It is true that in this country the power resides with the people and gives them the right to exercise their untrammelled will in laws of their own making; *which flows from the power.*

The right of eminent domain being the foundation and essence of sovereignty, one of the first acts of the Provisional Government of Texas was the assertion and exercise of this power in the suppression of all operations under empresario grants, and in the discontinuance of all former methods of alienating the public lands. The Republic acquired the right by revolution, and the public domain of Texas was especially reserved to the State in the articles of its annexation to the Union.

But notwithstanding the overthrow of the former system, the provisional act provided that all citizens who had become entitled to lands under the colonization laws of Coahuila and Texas should still receive them, and that all persons who might immigrate to Texas and perform the duties of citizens during its conflict for constitutional liberty, should likewise enjoy the benefits of the colonization laws under which they immigrated. These provisions were the

foundation and beginning of the benign head-rights system under which the larger portion of the lands of the State have been granted. They were followed by the bounty acts of 1835, which gave eight hundred acres of land to every soldier in the Texan regular army, six hundred and forty acres to every volunteer, and the same to the heirs of those who might fall in battle or die in the service.

In order to carry these measures into proper effect, a general land office was established in June, 1837, and placed under the control of the Secretary of War, who was required to give certificates to all persons entitled to lands under the bounty acts, and to record them in his office. In December, 1837, this act was extended so as to embrace all soldiers who were engaged in the battle of San Jacinto and the storming of Bexar, to whom company officers were required to give the certificates; and it embraced the heirs of all who fell at the butchery of Goliad, the siege of the Alamo, and other battles. Another act, passed about the same time, increased and graduated the bounties from three hundred and twenty to twelve hundred and eighty acres, according to time of service, and these lands were made inalienable during the life of the donee. These acts of bounty and donation conferring head-rights for military services extended to 1858, and included all soldiers engaged in the war for independence.

These grants, with the head-rights given also to every immigrant or head of a family, and to every male over eighteen years of age, who was a citizen of the country at the time of the Declaration of Independence and remained true to the Texan cause, composed a system and policy, which were as provident of the increase of population as they were benevolent in spirit and operation.

In consequence of the magnitude of business inaugurated by these provisions, an act was passed in 1837 establishing a separate land office, and providing for a general land commissioner to preside over the interests of the Republic in respect to its public domain. He was to be appointed by the President and maintain his office at the seat of government; yet it seems that this office was not opened to all

classes of grants until 1844, and its business prior to that time was confined chiefly to bounty and donation grants to soldiers and head-rights to citizens, who were dutiful during the struggle for independence. The Secretary of War continued to issue bounty and donation warrants until the close of the Texan war office in 1846, and this branch of his business was then assigned to the adjutant-general of the State.

The act of May, 1846, establishing a general land office at the seat of government, gave the commissioner power to execute and perform all acts and things respecting the public lands or the rights of individuals in reference to them, and provided him with an ample corps of clerks and assistants. This was the beginning of that extensive system, with its perfect and harmonious machinery, which now embraces the supervision and entire management of the public domain of Texas; and which, under the present efficient commissioner, Maj. W. C. Walsh, casts an eye of scrutiny upon every transaction concerning the public lands, which it is scarcely possible to evade.

But to comprehend the necessary steps for obtaining patents under this precise and complicated system, and to know where to find evidence of ownership requires a thorough knowledge of its appurtenances and operations. Muniments of title are scattered throughout the entire judicial system of the state, and to trace an old land title through all the variety of grants and modes of conveyance, with their various conditions and requirements; through the operation of wills, marriage, forced heirship, limitations, executions and tax sales; through the obscuring association of conflicting locations, adverse surveys, duplicate certificates and fraudulent grants, is perhaps the most tedious task that a Texas lawyer could be called upon to perform.

Every organized county in the state, which maintains a legally qualified surveyor, constitutes a separate land district. The district or county surveyor is required to examine the field notes of all surveys made in his district by his authority, upon which patents are sought to be obtained,

and certify to their legality and correctness ; and he is also required to keep in his office a map subject to public inspection, on which all the surveys made in his county are plainly indicated. He is commanded to transmit every three months all sketches and field notes made during that time to the commissioner of the general land office, and also a full description of all land certificates and warrants on file in his office.

Any person desiring to make an entry or location of land must apply in writing to the county surveyor, and file with him the evidence of his claim or title to the land which he wishes to have surveyed ; also a certificate, if of the first or second class, certified by the clerk of the County Court, or commissioner of the general land office. The application, evidence of title or claim, and the field notes of the survey are then transmitted to the general office, where the whole matter is subjected to thorough investigation, and if the claim is found to be genuine and correct a patent is issued to the applicant in the name and under the seal of the State, signed by the Governor, countersigned by the commissioner and registered in the general land office.

Every head of a family without a home can obtain a homestead donation of one hundred and sixty acres, and every young man in the State eighteen years of age can have eighty acres, anywhere in the public domain, simply upon entry and compliance with the foregoing requirements as to survey. But to prevent fraud no patent can be issued upon these donation certificates until the expiration of three years of continued occupancy by the settler or those who claim through him.

A provision no less benign is that which gives the right of pre-emption. Every person in the State, who is eighteen years of age, has the privilege over all others to purchase and pre-empt within one year, at one dollar per acre, including the improvements, one hundred and sixty acres of the public land, upon which he may have entered and settled in good faith, provided that he makes application for a survey and certificate of the right at the time of occupancy.

These benevolent laws have established thousands of Texan families in a condition of happiness, prosperity and usefulness. There is no excuse for healthy indigence. The State stands with the outstretched arms of welcome and benevolence. With one hand she beckons the enterprising and industrious, and with the other she points every person to a home who enters her borders.

But amid this benign effulgence of Texas jurisprudence its liberal and comprehensive educational system presents, if possible, a superior glow. No State, no country, ever made such ample and durable provision for general public education as that which graces the statutes of the State of Texas, and only a matter of time can intervene before her higher institutions of learning will take their stand among the best endowed and most efficient in America.

The Texas Republic, by an act in 1839, set apart fifty leagues of land for two universities, and three leagues in every county for the purpose of establishing in each a primary school or academy, and this was increased by the act of 1840 to four leagues, appropriated in each county to school purposes. These were protected from settlement by the act of 1856, which precluded settlers upon the school lands from the benefits of the statute of limitations. The constitution of 1845 required one-tenth of the annual revenues of the State to be set aside for educational purposes, and the act of 1854 appropriated to this fund two millions of United States five per cent bonds, which was to be a special school fund with the interest accruing to school purposes. The act of 1858 established the University of Texas and appropriated one hundred thousand dollars of United States bonds for its maintenance, in addition to the fifty leagues set apart for university purposes by the Republic, and to this was added one-tenth of all the lands which had been reserved and set apart for the encouragement of the construction of railroads.

A large portion of these funds and the proceeds of the sales of the school lands were used in appropriations for frontier defences during the civil war, and together with those loaned to the railroads, which were permitted to re-

place them with treasury notes and coupons of the Confederate States, were entirely lost to the school system.

The Constitution of 1866 created a perpetual school fund consisting of all former dedications and appropriations made for that purpose and an alternate section of all lands granted to railroads, with an incomprehensible provision that if any portion of the public domain should at any time be sold to the United States, one half of the proceeds should accrue to the public schools. It also provided for the levy of a special school tax and forbade the loan of the school funds, and restricted their investment to United States bonds, or the bonds of the State of Texas and to such bonds as the State might indorse.

But it was left for the present Constitution of Texas, adopted in 1875, to crown with benevolence all known laws and legislation providing for the education of the young in any State or country. In addition to former appropriations, one-half of the public domain of the State, and all sums arising from the sale of any portion of it, constitute a perpetual school fund; and a portion of the public revenue, not to exceed one-fourth, also a capitation tax of one dollar on every male citizen between the ages of twenty-one and sixty years, are annually set apart for the benefit of the public free schools. These funds are placed beyond the power of any other appropriation whatever. This Constitution provides for the establishment of a "University of Texas," which shall include an agricultural and mechanical department. In addition to former grants it sets apart one million acres of the public lands for the benefit of the university, and requires the Legislature to provide for and maintain an institution of the first class. The Governor, Controller of Public Accounts and the Secretary of State are constituted a board of public education, and are required to make a proper distribution of the school funds among the counties. Separate schools are provided for the two races, and no school with a mixed attendance of the white race and negroes or their descendants to the third generation can participate in the benefits of the public school fund.

The amended Constitution of 1883 went yet further in making appropriations to the school system, and gave it one-fourth of the revenue derived from the State occupation taxes, and added to this the levy of an annual *ad valorem* State tax of such an amount, not to exceed twenty cents on every one hundred dollars, valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain the public free schools for a period of not less than six months in each year. The Legislature was authorized to form school districts within all or any of the counties of the State, and authorize an additional *ad valorem* tax to be levied and collected in these districts for the further maintenance of the public schools in each system; provided that two-thirds of the qualified voters in each district shall vote such tax, which is not to exceed twenty cents per annum on every one hundred dollars, in valuation of the property subject to taxation in the district. But this limitation of the tax does not apply to cities and towns constituting separate school districts.

The Legislature by an act of January, 1884, provided for the election of a State superintendent of public instruction, to be chosen at each general election of State and county officers, who shall also be *ex-officio* secretary of the state board of education. He is charged with the administration of the school law, and with a general superintendency of all matters relating to the public schools of the State. He is required to make an annual apportionment of the available school funds among the counties, and to the cities and towns which constitute separate school organizations, according to the scholastic population of each. The county judges have, under the direction of the State superintendent, the immediate supervision of all matters pertaining to public education in their respective counties.

This system, with its vast and perpetual endowment and comprehensive organization, affords a basis of a universal popular education, around which cluster the brightest hopes and prospects of the State. As the benign donation, pre-emption and exemption laws preclude all excuse for indi-

gence, so the liberal school system removes all reasonable grounds in which ignorance and illiteracy can take root.

The act required the Governor to appoint a superintendent immediately; and the cultured young gentleman who was assigned to that duty, and who has since been elected by the people, has a grand and noble task before him, which his energy and efficiency will doubtless accomplish in a development of the public school system into a practical benevolence, philanthropy and public good, which will be his greatest personal credit, and the highest honor of his State.

The criminal laws of Texas are of a purely statutory character. They are embodied in a penal code prepared by two able lawyers — John W. Harris and James Willie — in pursuance of an act of the Legislature passed on the 11th of February, 1854. This code became the law of the State in February, 1857. Its design was declared to be the definition in plain and unmistakable language of every offense against the laws of the State, and to assign to each its proper punishment; so that the penal law of the State might be complete within itself and have no dependence upon any laws, written or unwritten, of any foreign system; and it was declared that no person should be punished for any offense which was not expressly defined and the penalty affixed by the statute laws of the State. The common law, however, is retained as a rule of construction when not in conflict with any statutory provision. The code and every law enacted upon the subject of crime is to be construed according to the plain import of the language in which it is written without regard to technical distinctions or any difference of construction between penal laws and those upon other subjects. No person can be convicted of an offense who is under nine years of age, nor who is under thirteen unless sufficient discretion be proven. No person can be punished with death who has not attained the age of seventeen years, nor can a married woman who commits an offense by the command or persuasion of her husband; but she may be imprisoned for life. The common-law rules of evidence are observed in respect to the proof of insanity in

the trial of all offenses in which that plea is made. All persons who act together in the commission of crime are deemed principals, and all persons present at the commission of an offense who advise, encourage, or agree to its perpetration are likewise held to be guilty of the act.

Neither the husband nor wife of an offender can be an accessory, nor his brothers and sisters, nor his domestic servants, nor his relations by consanguinity or affinity in either line. These, when accomplices, bearing authoritative relations to the principal, receive, the highest penalty affixed to the offenses, and there may be accomplices in all offenses except in manslaughter and negligent homicide.

The punishments which may be inflicted under the code are death, imprisonment in the penitentiary for life or a term of years, or in the county jail; forfeiture of civil or political rights, and pecuniary fines. There are but three offenses which can incur the penalty of death — these are treason, murder and rape. Those for which the punishment may be imprisonment in the penitentiary are murder in the second degree, arson, robbery, burglary, rape, theft, forgery, and conspiracy to commit either of these crimes; misprision of treason, manslaughter, assault with intent to commit a felony, maiming or disfiguring the person of another, kidnaping and abduction, abortion, seduction, administering poisonous and injurious potions, dueling, willful burning, malicious mischief, misapplication of public money, dealing in fraudulent land certificates, bribery, perjury, counterfeiting, permitting escapes by officers; giving false land certificates, authentication or entry by an officer, false swearing and subornation, conversion of money, script or other evidences of debt by officers, the rescue of convicted felons, bigamy, miscegenation, incest, sodomy, giving false certificates by public weighers, illegal marking and branding, altering or defacing marks and brands, embezzlement, swindling, and fraudulent disposition of mortgaged property.

Offenses which may incur imprisonment in the county jail are: aggravated assault and battery, negligent homi-

cide, disturbing public worship, offenses affecting suffrage, failure of duty on the part of officers, barratry, malicious prosecution, false personification, riots, rescue of prisoners convicted of misdemeanors, preventing labor, desecration of graves, using false weights and measures, false imprisonment, libelling, slandering, false accusations and threats of prosecution, spreading infectious diseases, threats to take life, sending threatening letters, and petty thefts.

Those which may receive only a pecuniary punishment are: illegal contracts affecting the State, extortion in the collection of taxes or other public money, dealing in public lands by officers, drunkenness in office or in public places, bribing the officers of elections, offenses committed by them, disturbing public worship, violating the Sunday laws, extortion by officers, official peculation, failure of official duty, barratry, compounding crime, malicious prosecution, false personification, unlawful assemblies, riots, disturbing residence, affrays and breaches of the peace, unlawfully carrying arms, adultery and fornication, keeping disorderly houses, indecent publications and exposure of the person, desecration of graves, illegal disinterment, illegal banking, conducting a lottery or raffle, gaming, betting at elections, unlawfully selling intoxicating liquors, vagrancy, illegal pawn-brokerage and violation of the insurance laws, carrying on offensive trades and nuisances, pollution and obstruction of water-courses, selling unwholesome food, drink or medicine, unlawful practice of medicine, violating quarantine laws, obstructing roads, streets, bridges and navigable streams, refusal to serve and failure of duty as overseer of public roads and irrigation, keeping a ferry without license, injuring public grounds and buildings, trapping and netting out of season, using false weights and measures, simple assault or battery, false imprisonment, kidnaping and abduction, attempt to produce abortion, negligent homicide, libelling, slandering, false accusations and threats of prosecution, willful burning, malicious mischief, spreading infectious diseases, destroying timber, selling stock without a list of the brands or bill of sale, butchering animals without brand, failing to

make report of animals slaughtered for market, selling stock by auctioneers without written statement as to their acquisition, unlawfully using or disposing of estrays, the giving of fraudulent certificates by public inspectors, threats to take life, sending threatening letters, and petty theft.

All offenders suffer double penalty upon a second conviction, and may receive quadruple punishment upon a third and subsequent conviction; and when an offense of which a person is convicted is continuous in its nature, judgment is also rendered for its suppression. All convictions of felony work a forfeiture of political rights.

The act of 1879, declaring the penal code to comprise the entire criminal jurisprudence of the State, also adopted a code of criminal procedure, embracing its entire criminal judicature. The object of this code, as declared, was to render the rules for the prevention and punishment of offenses intelligible to the officers of the law, and to all persons whose rights might be affected by them; to prevent the commission of crime, and all hope of escaping its penal consequences; to insure a fair and speedy trial, and the production of all important evidence, and to provide for certain execution of sentence where the law is declared. It is also provided that if any necessity should arise for a rule of procedure not contained in this code, the rules of the common law shall be applied and govern. This code defines the general duties of officers charged with the enforcement of the criminal laws, fixes the criminal jurisdiction of the several courts, lays down rules and proceedings for the prevention and suppression of offenses, and in regard to the writ of *habeas corpus*. It provides the time and place for the commencement of criminal actions, with the incidents of arrest, commitment, bail, and search-warrants; presents rules for the organization of grand juries, and defines their duties; describes the nature and requirements of indictments and informations, and of all proceedings preliminary to trial. It provides ample and elaborate rules in regard to trial and its incidents, also in respect to proceedings after verdict, and all miscellaneous proceedings connected with criminal trials.

This general view of Texas jurisprudence reaches the limits of the scope of this work, and the following chapters will be devoted to biographies of the eminent judges and lawyers whose professional careers have made important impression upon the jurisprudence of the State; and with these will be interwoven such details and prominent features as will promote an exposition of the peculiarities of Texas jurisprudence and preserve the memory of the professional eminence which it has produced.

CHAPTER V.

THE BENCH OF THE REPUBLIC AND STATE — EMINENT JUDGES, DECEASED —
JAMES T. COLLINGSWORTH — THOMAS J. RUSK — JOHN HEMPHILL — ANDERSON HUTCHINSON — R. E. B. BAYLOR — RICHARD MORRIS — WM. B. OCHILTREE — ABNER S. LIPSCOMB — R. T. WHEELER — GEORGE F. MOORE — A. J. HAMILTON — LEMUEL D. EVANS — PETER W. GRAY — M. H. BONNER — S. P. DONLEY — THOMAS H. DUVAL — AMOS R. MORRILL — M. D. ECTOR — C. M. WINKLER — BENJAMIN C. FRANKLIN — RICHARDSON A. SCURRY — WILLIAM S. TODD.

Of all the varied characters of men there is no one whose traits are wrought to a higher standard of excellence, and whose composition is more devoid of the petty weaknesses as well as the grosser foibles of mankind, than that of a truly learned, just and upright judge. His functions are among the most sacred and elevated that pertain to the affairs of humanity, and he feels the weight of that responsibility which incurs from a higher seat the same judgment which he has meted to others.

His mind is at once the sun and moon of the law. It sheds its beams upon its obscure features, illumines without lenifying its stern aspect, and in turn reflects its light upon the face of society, penetrates the dark confines of human depravity, and presents a beacon for the guidance of rectitude.

His heart is a tablet upon which are inscribed in mingled characters the rigid outlines of justice, the stern mandates of a jealous rule, and the smiling pictures of benevolence and philanthropy. He knows no passion but his devotion to duty; he cherishes no motive but the attainment of justice; he fears no displeasure but the reprimand of conscience, and seeks no applause but the benediction of right.

His conscience vibrates at the tenderest touch of doubt, and utters its strains of hallowed dictation at the slightest appeal of virtue. His judgment stays to catch the notes

of its approbation, and his actions leap forth at its bidding. It is there alone that he seeks for justification and reward, and there finds himself the sanctified recipient of the blessing vouchsafed to the faithful servant. He holds to the sentiment of Persius, "*Nec te quæsieris extra,*" and which Dryden has happily translated: —

"The conscience is the test of every mind;
Seek not thyself, without thyself, to find."

This precept forced itself as a necessity upon the conduct of the early judges of the Texas courts. Without applicable precedent, or the controlling maxims of any fixed system, they were guided by reason, by analogy, and, above all, by their own conscientious views of right and wrong. That these were sometimes speculative and often conflicting, was but the natural effect of the different shapes and colors in which things present themselves to the varied mental visions of mankind. Their reasoning was not to fit circumstances to law, but to adjust the law to the facts, and conscience was the plumb-line of the measurement.

On the erection of Texas into a separate superior judicial district in 1834, by the Congress of Coahuila and Texas, Thomas Chambers was appointed superior judge, and was the incumbent of that office when the provisional system of the Consultation intervened in 1835. The first chief justice of the Republic was James T. Collinsworth, a lawyer of ability, who had been United States district attorney in Tennessee. He committed suicide by leaping from the deck of a vessel in Galveston bay before he had held any regular term of the Supreme Court, and was succeeded by the subject of the following sketch.

THOMAS J. RUSK.

Thomas Jefferson Rusk, a Texan general, jurist and statesman, was born in Pendleton district, South Carolina, on the 5th of December, 1803. His father was a native of Ireland, and pursued the occupation of a stone mason. Being honest and industrious, he secured a residence upon land belonging to John C. Calhoun; and here, under the inspiring influence of the great Southerner, the subject of this sketch received his first ambitious impressions, and became imbued with that love of freedom and broad view of human rights and human destiny which grew and developed into qualities that made him one of the heroes of a young nation struggling for constitutional liberty. Mr. Calhoun discovered the budding capacity and glowing ambition of his young tenant, and procured him a situation in the office of the district clerk, where he earned a living and at the same time prepared himself for the bar. On obtaining license to practice law, he removed to Clarksville, Georgia, and soon obtained prominence in his profession. But here, in the midst of the gold region of that State, his ardent nature and enterprising spirit caused him to be drawn into the tide of speculation, which at that time rolled its sparkling bubbles over that portion of Georgia, alluring men of all professions into its seductive but often ruinous vortex. Mr. Rusk invested his means in the stock of a company of land and mine speculators, the managers of which embezzled the corporation funds in 1835, and fled to Texas. He pursued them, and on arriving at Nacogdoches, was so well pleased with the appearance of the country that he determined to make that place his future home. But the turbulent times immediately preceding the Texas Revolution produced events that stirred the fires of

patriotism which had been kindled in the bosom of his youth, and at the head of a body of Texans whom his enthusiasm had aroused, he hastened to check and avenge the massacre of Americans by Mexicans in the country between the Brazos and the Rio Grande. From this time he devoted himself entirely to the achievement of Texan independence. He was a colonel in the siege of San Antonio, and a member of the convention which declared the independence of the Texan Republic. In the organization of the new government he was appointed secretary of war, and established his office at the headquarters of the Texan army; and while it was retreating eastward after the fall of the Alamo and the defeat of Col. Fannin, he ordered the countermarch which culminated in the battle of San Jacinto. When Gen. Houston was wounded in the beginning of that action, Col. Rusk assumed command, and led the charge which put the enemy to route. The wound of Gen. Houston having disabled him from active service, Col. Rusk was made a brigadier-general, and placed in command of the Texan army. His conduct throughout the struggle was characterized by the utmost vigor and courage. He was prompt to move in whatever direction the army was needed, and was always ready for battle.

After the retreat of the Mexicans he proceeded to Goliad, the scene of Fannin's defeat, and caused the mutilated and seared remains of the Texans, which were scattered over the field, to be gathered up, and when they were brought together for burial he delivered over them an oration, which, in eloquence and pathos was unsurpassed by that of Pericles over those who fell in the Samian war, in which he endeavored to impress the devoted patriotism of the dead as an example of glory upon the living. It is said that many a rough and hardy soldier, whose eyes had never since childhood been wet with the waters of sorrow or sympathy shed copious tears that day over the half consumed bones of his comrades, which, after the funeral oration of the General, were deposited with the honors of war in one common sepulchre.

In the fall of 1836, Gen. Rusk was appointed to a seat

in the Cabinet of President Houston, but soon resigned in consequence of the condition of his private affairs, which at that time claimed his whole attention. In 1837 he was elected from Nacogdoches to a seat in the second Congress of the Republic, and during the ensuing year was engaged in the war with the Cherokees, Caddoes and other tribes of Indians which had been incited by the Mexicans to acts of rapine and atrocity in Northern and Eastern Texas. In February, 1839, he was elected by Congress to the office of Chief Justice of the Republic, which he occupied one year, and resigned in order to again return to the supervision of his domestic affairs. His decisions, only five in number, are reported in Dallam's Digest.

It can not be said of Judge Rusk that he was a learned judge or a profound lawyer. Flung in the prime of life into the van of a revolution which quickened and engaged every energy of his nature his *lucubrationes annorum viginti* were divided between the forum, the field and the halls of legislation, in which the new government was putting on the panoply of an independent nation. But his knowledge of law was equal to the circumstances which surrounded him. If his opinions are apparently arbitrary and sententious in their brevity, it must be borne in mind that it would have been absurd to quote precedents and authorities from systems of law which had not been adopted by the republic, and it would likewise have been folly to attempt to explain the various impressions which the multiplied details of circumstance made upon his mind in the formation of opinion, if indeed it were possible for any one to present at all times an intelligent analysis of the mental process which leads to conviction.

On retiring from the bench Judge Rusk resumed his practice, and took his place at the head of the bar of the Republic; but while he was a lawyer of sound judgment, of a clear perception of right and wrong, and of a deep sense of justice, his abilities as a statesman and as a leader of men were pre-eminent, and in 1843 he was again called to public service, and was appointed brigadier-general of militia, an office which conferred upon him almost unlimited

power in the Republic. He held this position one year, and then devoted his energies to the annexation of Texas to the American Union, of which he was one of the first and most zealous advocates. He was elected a member of the Convention of 1845, which framed the Constitution of the State, and was unanimously chosen president of that body. The first Legislature of the State elected him in March, 1846, to the Senate of the United States, in which he continued to serve his country with unswerving fidelity and pre-eminent ability to the time of his death. He held a proud and influential position in the Senate, and was for several terms at the head of the Committee on Postal Affairs. It is said that the President offered him the position of Postmaster-General and he declined it. During the session of 1855 he was president *pro tem* of the Senate, and discharged the duties of the chair with a dignity, impartiality and ability which gained for him the most enviable parliamentary laurels, and deepened the respect in which he was held by the members of that august assembly. He was one of the most popular members of the Senate. He was trusted, honored and beloved by all parties; and while he rarely delivered a set speech, his quiet and unobtrusive manners and unwearying watchfulness of the interests of his constituents availed them more than all the powers of oratory could have achieved.

Judge Rusk was exceedingly social and domestic in his habits, and it was, perhaps, this fondness for the retirement of home life which caused him so often to resign or decline the offices of honor and trust which were offered him or conferred upon him. He was warm in his friendship, and devoted and constant in his attachments, while his patriotism was the ruling passion of his life. But the loss of his wife, whom he married in Georgia, and who had shared with him all the vicissitudes of his career, induced a fatal despondency which, aided, perhaps, by other causes, drove him to the desperation of suicide, and he died by his own hands, in the City of Washington, in 1857.

JOHN HEMPHILL.

The professional minds of judges and lawyers may be divided into two separate and distinct classes, which may be aptly designated, respectively, the perceptive and the memorative. To one class belong those whose legal knowledge and perception depend upon memory, and are subservient to a vague medley of general precedents and authorities which must be invoked on all occasions when it becomes necessary to grapple with great and important questions. To this class usually belong those whose powers of perception have never been whetted by close and continued application, and always those who are deficient in the organs of analysis and abstraction.

The other class comprises those who depend chiefly upon their own conscious resources, who combine and embody the principles of law with their own perceptions, and mingle them with the elements of their own judgment. Like Lord Thurlow, they care not so much "how a case was decided, as why it was so decided." With the first class both judgment and discernment are habitual plagiarisms, while with the other, these are the emanation of their own minds, and they speak as authorities themselves. The decisions of Chief Justice Marshall required no authorities to support them; and these judicial qualities eminently fitted the subject of this sketch for the development of a new system of laws amid circumstances which precluded access to the trodden fields of precedent. His long career upon the bench is characterized by an untiring and successful effort to harmonize the excerpted elements of Texas jurisprudence and endow it with an efficiency that could traverse the scope of justice.

Chief Justice John Hemphill was a native of South

Carolina, and was a descendent of one of the early settlers of that State. He was educated at Jefferson College, in Pennsylvania, from which he graduated in 1826, and immediately began the study of law. He immigrated to Texas at an early period of its history, and was one of the district judges of the Republic. He was an astute and erudite lawyer, and had attained to such eminence in his profession that upon the resignation of Judge Rusk, in 1840, he was appointed Chief Justice of the Texas Republic, but resigned in 1842 and accepted the position of adjutant-general, and accompanied Gen. Somerville in the unfortunate Mier expedition to capture reprisals for Texans held as prisoners in Mexico. He was a zealous advocate of the union of Texas with the American States, and was a prominent member of the convention of 1845, which adopted the ordinance of annexation, and of the convention that formed the State Constitution. In 1846 he was appointed chief justice of the State and held that position until 1858, when he was elected to a seat in the United States Senate.

Judge Hemphill was one whom nature seems to have especially designed to be an arbiter of the affairs of men. He possessed great candor, and a stern and unbending integrity. An acute and penetrating discernment, a nice discrimination, a clear perception and a sound judgment were predominating faculties of his mind; and the pursuit and attainment of justice afforded him the highest gratification. He never tired in the evolution of legal principles, and never failed to establish an equitable adjustment of the most complicated circumstances. It was said of Lord Hardwicke that he had an intuitive perception of the law, and Judge Hemphill possessed this rare gift to an eminent degree. His decisions, which extend through twenty-one volumes of the Texas Reports, are models of legal elucidation, and always set forth in a clear and unmistakable light the relations and rights of the parties. His powers of analysis and amplification were peculiarly adapted to the elimination and development of the varied issues of law, equity and fact, often presented by the pleadings under the

system which obtains in the Texas courts. His conclusions are never arbitrary or sententious ; but are combinations of pure and established elements, wrought together by the gavel of justice, and deduced along clear and logical paths, illuminated by the light of reason and sound judgment. He was fond of the refined and beautiful in literature, and his decisions often glow with a literary polish and elegance rarely found in the dry and hackneyed field of legal diction.

During his long career upon the Supreme bench, Judge Hemphill established many eminent precedents, and settled many questions which had been held in conflict in the older States. He was one of the most learned civilians of his time, and one of his greatest judicial achievements was his success in harmonizing the common and civil-law elements of Texas jurisprudence. He made many novel applications of principles of each system to render them conformable to our polity and suitable to our condition and the state of our society. But he had a strong partiality for the civil law, and during the debates in the convention of 1845, upon a clause of the Constitution allowing trial by jury in all cases, either in law or equity, he said : —

“I can not say that I am very much in favor of either chancery or the common-law system. I should much have preferred the civil law to have continued in force for years to come. But inasmuch as the chancery system, together with the common law, has been saddled upon us, the question is now, whether we shall keep up the chancery system or blend them together. If we intend to keep it up as it is known in the courts of England, the United States, and many of the States, and in the United States courts that will be established here, we should oppose this innovation ; for I do not know any alteration which could be a greater innovation than to subject all chancery cases to a trial by jury.”

He was never married ; yet he possessed none of the peculiarities usually belonging to those who grow old in celibacy. He was a champion of the widow and the orphan, a staunch advocate and protector of the legal rights of married women, and invariably gave to the laws regarding them

X a liberal construction. He has been styled in one of the decisions of an eminent judge the great champion of the homestead rights in Texas, and his decisions in regard to exemption, community interests and marital rights embellish and eminently characterize the jurisprudence of the State. He thoroughly understood the source and nature of Texas law. His opinions have rarely been disturbed by his successors, and they will always be quoted as high authority.

Judge Hemphill was a profound student, a thorough lawyer, a good man, and devoted to his judicial duties. His habits were seclusive, and his reserved manners sometimes gave him the aspect of sternness. Yet he possessed a generous nature, and his heart was aglow with tender sympathies and noble impulses. But while the beneficence of these qualities were often experienced by his friends, so eminent was his judicial character that it may be said of him, as Mr. Erskine once said of Lord Mansfield, that he was "that great and venerable magistrate who is remembered only with the impression of the awful form and figure of justice."

Judge Hemphill was thoroughly Southern in his sentiments, and his career in the United States Senate was characterized by a vigorous advocacy of the principles which swayed the minds of the Southern people. His entrance into the Senate was to step upon a plain from which he could observe the gathering clouds which in less than two years were to lower in the national horizon. He was not an orator, but his speeches abound with sound logic, and always present a stern array of facts in pure, terse and incisive language. His speech on the right of a State to withdraw from the Union, delivered in the Senate in January, 1861, is a superb exhibition of these qualities. In this speech he showed that Texas, having been an independent Republic, which had taken its stand among the nations, at the time of its annexation, would, in withdrawing from the Union, only resume the sovereignty and independence which she had laid aside when she entered it. He scouted the charges of ingratitude made at

that time upon Texas in view of her threatened secession, and showed that the State was in no way responsible for the Mexican war, and that it was not waged by the United States even for the benefit of Texas.

When his State seceded, Judge Hemphill retired from the United States Senate, and was sent as a delegate to the convention at Montgomery. He was subsequently elected to a seat in the Confederate Congress, and died in Richmond in 1862. His remains were brought to Austin and interred in the State cemetery, where they repose by the side of some of the associates of his long judicial career, while his name is inscribed in letters of indelibility upon the jurisprudence of Texas, where it will receive the tribute of veneration as long as the voice of justice shall be heard in the land.

ANDERSON HUTCHINSON.

Anderson Hutchinson was a native of Greenbrier County, Virginia, and received a common-school education, most of which he acquired at intervals while assisting his father in his office, which was that of clerk of the county court. Here he also acquired some practical knowledge of legal forms and processes, which was, no doubt, the foundation of those habits of accuracy and that expertness in the preparation of legal documents which characterized his practice and gained him success.

On reaching the age of manhood Mr. Hutchinson emigrated to Knoxville, Tennessee, where he was admitted to the bar, and soon acquired considerable reputation. This he achieved by means of perseverance and a vigorous devotion to his profession, as well as by the native faculties of his mind, which the very touch of learning kindled into a flame of genius. After practicing some years at Knoxville he removed to Huntsville, Alabama, and there encountered, with increasing reputation, the eminent lawyers of that noted bar. He then removed to Mississippi, and established his residence in the town of Raymond, in Hinds County, about the year 1835.

In 1840 he published, in conjunction with Volney E. Howard, a digest of the laws of Mississippi, for which the Legislature allowed him \$12,000, purchasing fifteen hundred copies, and in 1848 he published his Mississippi Code. This is undoubtedly a work of great merit, and required an incalculable amount of labor as well as great ability in its preparation. It is not a digest, nor revision, nor a compilation of the statutes at large, but an analytical compendium, excluding all enactments not in force except those which are necessary to explain some right originating from them, or requisite for affording an insight into existing statutes.

The plan of this work conforms to the admirable analysis of Blackstone's Commentaries, and in its arrangement presents a striking novelty as well as an exhibition of marked genius. It gave entire satisfaction, and the Legislature ordered two thousand copies, to be distributed among the officers of the State.

In the spring of 1841 he removed to Texas, and was soon afterwards appointed one of the district judges, who, when sitting in banc, composed the Supreme Court of the Republic. In this capacity he acquired an exalted reputation as an able lawyer and a man of integrity. He had been but a short time upon the Texas bench when, while sitting on the trial of an important case in San Antonio, he was captured by a sudden advance of the Mexicans under General Woll. After a gallant defense by the citizens, in which he actively participated, the advance guard of the Mexican invading army broke into the town, captured the courthouse and carried away the judges and other officers of the court, as prisoners, to the castle of Perote. Here he was closely confined and subjected to great hardships; but, through the influence of the celebrated Waddy Thompson, at that time the American Minister at the City of Mexico, he was released in 1843, and, returning to Mississippi, renewed his practice in co-partnership with Henry S. Foote.

As a lawyer, Judge Hutchinson owed his success and celebrity more perhaps to an accurate and laborious preparation of his cases than to any pre-eminent feature of ability. He was deeply read in the law, and by application and indefatigable industry availed himself fully of his extensive knowledge and resources. The accuracy of his pleadings, his uniform urbanity and simplicity of manners, his fidelity to his clients, and the force of character which he brought to bear upon a cause, all contributed to his great popularity and success. He possessed an extraordinary degree of promptness, decision and energy, which, with a sincere kindness of heart and love of justice, enlisted for him a confidence which no power could shake; and he made a lasting impression upon the jurisprudence of both Mississippi and Texas. He died in the year 1853.

R. E. B. BAYLOR.

This pious man and upright judge was born in the State of Kentucky during the year 1793; but in early life removed to Alabama, studied law, and was admitted to the bar of that State. He also became an active politician, and represented his district in the United States Congress. In 1839 he emigrated to Texas and settled in Fayette County, where he practiced his profession, and, being also a minister of the gospel, pursued at the same time, the duties of his clerical functions. He was soon afterward appointed district judge, and was one of the judges of the Supreme Court of the Republic from 1841 to the annexation of Texas to the Union. He was re-appointed to the bench of the State, and held the office of district judge until the feebleness of old age compelled him to retire from the active duties of professional life.

He was a member of the Convention of 1845, which framed the first Constitution of the State, and acted a prominent part in that distinguished assembly. Though a Baptist clergyman, he favored the adoption of the provision of the Constitution excluding ministers of the gospel from civil office, and "dedicating them to God and the care of souls," and upon a motion being made and supported by Mr. Henderson and others, to strike out the excluding clause, he said: "I think the clause a wholesome and wise one. I do not think that any office coming directly from the people ought ever to be filled by the clergy of any denomination. I would as soon see a woman mingling with the populace at large, mounting the rostrum and making stump speeches, as it is generally called, as to see a clergyman engaged in business of this kind. Sir, the good and pious do not wish this thing; none but the ambitious desire it, and they,

before all others, ought to be excluded. There are sectarian jealousies and heartburnings enough among the various religious denominations of every country ; and by opening this new field to human ambition, you will only make the breach between the different sects of Christians wider than it is now. I think, therefore, that the section ought to be retained. A great deal might be said upon the subject. It seems to me, further, that it is calculated to keep clear and well defined the distinction between Church and State, so essentially necessary to human liberty and happiness. Sir, priests and kings, the former of every denomination, not the Catholic alone, have conspired in all countries and nations to enslave mankind. It has been a received maxim in Europe, that the king should govern the priest, and the priest the people. What have our fathers thought upon the subject? In many of the State Constitutions the clause has been inserted. It has been thought wise and proper by their framers. A similar feature is found in our present Constitution. In conclusion, I have neither the strength nor the ability to do justice to the subject; I therefore simply say that I hope the clause will be retained by the good sense of this House."

Judge Baylor was a good lawyer and an excellent judge, and his pure character and professional qualifications were exemplary and elevating to both the bar and the bench of his time. Some of his decisions are reported by Mr. Dallam, and while, like those of his associates at that period, they are terse and seemingly without much reference to precedents, they manifest an earnest search for truth, and a conscientious dispensation of justice. He died at his residence near Independence, in Washington County, in December, 1872, and the Baptist denomination has perpetuated his name and memory by "Baylor University," named in his honor.

RICHARD MORRIS.

The subject of this sketch was a native of Virginia, and was born in Hanover County on the 27th of December, 1815. His father, Richard Morris, was a gentleman of culture and a lawyer of distinction, and for many years practiced his profession, with much success, in Hanover and the adjoining counties. But having inherited an ample fortune, he was independent of the remuneration of his practice, and never gave to the study of law that assiduity which is necessary to the attainment of the highest professional eminence. While he had but little taste for politics, and sought no political preferment, he was a man of great popularity, and was elected to the Legislature when he was not a candidate for the position. He was also elected a member of the Virginia Convention of 1829, which was convened to frame a new Constitution for the State, and in that body of truly great men he performed his part with credit to himself and his constituents.

At the age of fourteen years Richard was sent to the celebrated Burke High School, in Richmond, to be prepared for a collegiate course. At this school, which was at that time perhaps the most noted in the State, he remained two years, and then entered the University of Virginia. Here he pursued an academic course during the two succeeding years, and then began the study of law in the office of his father. In the fall of 1835, he returned to the University and pursued his studies in the law department one session.

In 1838, having obtained his license, he removed to Texas and located at Houston, where he commenced the practice of his profession. He soon afterwards formed a copartnership with James H. Davis, Esq., a young man who had just graduated in both the academic and law de-

partments of the University of Virginia. They began their professional career under the most favorable auspices, and with the brightest prospects, but their copartnership was soon dissolved by the death of Mr. Davis, which occurred in the summer of 1840.

Soon after the death of his partner, Mr. Morris changed his residence to the city of Galveston, where he continued his practice alone and with great success. So rapid was the rise of his reputation that before he was twenty-six years of age President Lamar voluntarily appointed him to the high and responsible office of judge of the first judicial district, which *ex-officio* made him one of the judges of the Supreme Court of the Republic.

In the fall of 1841, soon after his appointment to the bench, Judge Morris married Miss Mary Love, of Galveston, a lady highly accomplished, and of the most amiable qualities, and who was in every respect worthy of her husband. She was the daughter of Hon James Love, formerly a representative in Congress from Kentucky, and afterwards a member of the Convention of 1845, which formed the first Constitution of the State of Texas. He was subsequently judge of the first judicial district, and then of the criminal courts of the Houston and Galveston district.

The career of Judge Morris on the bench was able and exemplary. While he was the youngest judge within the Republic, the lawyers who practiced before him were soon convinced of the wisdom of President Lamar in appointing him to the position. In the trial of cases he listened to both sides with patience, courtesy and respect, and no judge ever held the scales of justice more evenly. He discharged the duties of this office nearly four years to the perfect satisfaction of the members of the bar and of the people, and appeals were rarely taken from his decisions.

Judge Morris attended three sessions of the Supreme Court of the Republic, at that time held by the district judges sitting in banc, and some of his decisions and opinions in important and difficult cases are found in Dallam's Digest, which speak for themselves. Of these the most important are: *Forbes, Brooks & Co. v. Wm. G. Hill, Dallam,*

p. 486; Allcorn, *Amr. v. Sweeny*, *Ib.*, p. 494; Taylor *v. Duncan*, *Ib.* 514; Walker & Walker *v. McNiels & Calder*, *Ib.* 541; Hamilton *v. Black's Admr.*, p. 586; Morris *v. McKinney*, p. 619, and Carr, by Monaghan, guardian, *v. Wellborn*, p. 624.

These opinions are referred to mainly to show that they were written by a man of education and uprightness, who had studied and understood the principles of both law and equity. They also show the highest order of judgment, discretion and love of justice in applying these principles to the variety of difficult cases submitted for his decision. No lawyer would conclude from reading his opinions that they were written by one so young in years. The verdancy of his youth is hidden by the hoary locks of wisdom. It will be observed that there was never a dissent from his opinions, but a uniform concurrence in all his views.

While he was in the prime of his usefulness and vigor that fatal besom which has so often and sorely afflicted whole communities of the South, swept over Galveston, and in his twenty-ninth year Judge Morris fell a victim to yellow fever, and died on the 19th of August, 1844.

It may be truly said of him that he was an enlightened, able and impartial judge. Upon the bench he was courteous, dignified and patient, and in society he was a gentleman of refinement and polish. He was an ornament to the Texas bench, and no judge ever laid aside a more spotless and unsullied ermine.

WILLIAM B. OCHILTREE.

The subject of this sketch was born in Cumberland County, North Carolina, on the 18th of October, 1811. His educational advantages were slender, and he removed when quite young to the Territory of Florida, thence to Alabama, where he was admitted to the bar, and entered upon the practice of his profession. In 1839 he removed to Texas, and settled at Nacogdoches, where he soon acquired a large practice.

The bar of Nacogdoches was at that time noted for legal ability, and was justly regarded as one of the most distinguished in the Southwest. It was adorned with such professional luminaries as Thomas J. Rusk, A. Pickney Henderson, K. L. Anderson, Royal T. Wheeler, O. M. Roberts, Thomas J. Jennings and others, whose genius elevated and embellished the jurisprudence of the Republic and State; but Mr. Ochiltree was equal to the requirements of success, and to the severe test which a claim to eminence demanded, and was soon recognized as one of the most skillful and logical, as well as one of the most learned advocates at the bar. While he was deficient in general learning, his vigorous mind grasped and embraced the subtleties of law with an alacrity and comprehension which placed him in the first rank of the profession. His mind was always clear and ready, and his statement of facts was so plain, his application of law so lucid, that no ingenuity of argument, no skill of abstraction could pervert the meaning or obscure his position.

In 1842 he was appointed judge of the fifth district of the Republic, which made him *ex-officio* one of the judges of the Supreme Court. His decisions are reported by Mr.

Dallam, and though rendered at that early day, are not without interest, especially that in *Titus v. Hardin*, and in the *Republic v. the famous Monroe Edwards*.

In 1844 Judge Ochiltree was selected by President Jones as a member of his cabinet, and was appointed Secretary of the Treasury, and in November, 1845, was transferred to the Attorney-General's office. In the former position he gathered the knowledge of finance, and in the latter, his familiarity with criminal jurisprudence, which made him afterwards distinguished as a financier, and particularly as a successful criminal lawyer.

Upon the annexation of Texas to the United States, he was elected a delegate to the Convention which framed the Constitution of the State, and was an active and prominent member of that body. This convention was composed of the ablest men of Texas, and the result of their labors is an everlasting monument of their wisdom. The Constitution with which the new State was launched into the Union has no superior in statesmanship in the history of organic law.

After the adjournment of the Convention he was appointed judge of the fifth judicial district, but soon returned to the bar, and for ten years devoted himself without interruption to the practice of his profession. His practice was extensive, and it was during this time that he achieved some of his greatest professional triumphs. His popularity was great, and he received the familiar *sobriquet* of *Buffalo Head*, which was given him in consequence of the peculiar formation of that member, which was remarkably large and encephalic, indicating intellectual powers of the highest order.

In 1855 he was a member of the sixth Legislature, and was one of the most able and conspicuous members of the House. He was chairman of the judiciary committee, and his speeches upon measures affecting the public debt and the public lands were able and eloquent, and his views chiefly moulded the policy of the State in regard to those questions. His speech in favor of the civil-law doctrine of

forced heirship, and against the adoption of the statute of wills, while not so effective, was likewise able and interesting.

As an orator Judge Ochiltree had few equals at the Texas bar, possessed of a clear and stentorian voice, his elocution was vehement and impassioned and swept the field of debate like a resistless tempest. The brilliant flashes of his genius and the sudden outbursts of his natural eloquence often surprised and confounded his opponents and charmed his audience into a sympathy with his views which gained him many a narrow success, both at the bar and in the halls of legislation.

In 1859 he removed to the town of Marshall, and in 1861 was chosen a member of the Convention which adopted the ordinance of secession, and was one of the signers of that instrument. He was elected as one of the delegates to the Provisional Congress of the Confederate States at Montgomery, and his ability gave him great influence in that distinguished assembly. When hostilities began he resigned his seat in order to transfer his services to the field, and, returning to Texas, soon raised a regiment of infantry which was attached to Walker's division, and which he led with conspicuous gallantry; but owing to ill health he resigned the command of his regiment in 1863 and returned to his home. His health continued to decline, and, while, he watched the progress and culmination of the strife with the most intense interest and anxiety, he was no longer able to participate in public affairs, and being aware of the fatal character of his decline he devoted his time to setting his house in order, became a member of the Episcopal Church and died in the faith of Christianity at Jefferson on the 27th of December, 1867.

Judge Ochiltree saw Texas through all the phases of her existence, save the last. He had seen her as an independent sovereign nation, as a prosperous State of the Union, as a gallant member of the Confederacy and as a conquered province, degraded by military rule, and it is a pity that he did not live to see her risen like Thebes from her smouldering ashes and clad in the robes of a new prosperity.

The public services of Judge Ochiltree were characterized by a patriotic devotion to the welfare of his State, and his ability and fidelity made a lasting impression upon every sphere of his public duties, and elevated every position which he held. During a period of thirty years his name is closely connected with the history of Texas, and she will preserve it as of one of her truest and most useful citizens.

In social life he was generous and kind, courteous and affable in his demeanor to all classes and attracted the regard of all who approached him. He was greatly beloved by his family, esteemed by his neighbors and universally revered by his fellow-citizens.

ABNER SMITH LIPSCOMB.

This great and good man was born in Abbeville District, South Carolina, on the 10th of February, 1789. His parents were natives of Virginia, and emigrated to South Carolina prior to the war of the Revolution, in which his father bore a patriotic part. His early scholastic advantages were only such as the common schools of that period afforded. He studied law in the office of John C. Calhoun, and in the glare of his tutorship imbibed those beams of greatness which kindled the fires of genius that afterward blazed along his own pathway. The inspirations of such a nursery and the impressions which he received from the master mind of his distinguished preceptor, blending with the impulses of ambition and natural endowments, wrought into the plastic mould of his mind qualities which afterward expanded into an illustrative type of true greatness. He often referred to the beneficial and stamping influences of his early associations, and cherished with just pride the memory of his tutelage.

In 1811, having obtained his license, he removed to St. Stephens, on the Tombigbee River, in Alabama, and entered upon the practice of his profession. His energy, fidelity and integrity soon commanded an extensive and lucrative business, while his steady and vigorous application gathered a knowledge of law which destined him for the highest judicial sphere. He was married in 1813 to Elizabeth Gains, daughter of a planter residing in the Mississippi Territory; but patriotism shared his nature more largely than the sentiments of professional devotion, or even the tenderest conjugal affection, and he soon afterward broke away from the society of his young wife and the emoluments of his practice and responded to a call for troops to

quell the hostile demonstrations of the Indian tribes along the Southern frontier, excited by the war of 1812. When quiet was restored he returned to St. Stephens and resumed his practice, but was soon called again into public service of a different character, in which he spent the greater portion of his after life.

He had been a member of the Territorial Legislature, and upon the organization of the State government in 1819, he was appointed, when but thirty years of age, one of the circuit judges, who, sitting in banc, constituted the Supreme Court of Alabama. In 1823 he was made chief justice of the State and held that position eleven years. His opinions are presented in the first ten volumes of Alabama Reports.

In 1835 he resigned his seat upon the bench and removed to the city of Mobile, where he resumed his practice and increased the high reputation which he had already achieved at the bar. His superb social qualities and congenial disposition made him popular with the people. He had always been a staunch and consistent Democrat, and in 1838 was nominated by the Democracy of Mobile as a candidate for the Legislature; and so great were his personal popularity and the weight of his character that he was elected over the Whig candidate, notwithstanding that the latter party had an overwhelming majority in the city, and had been in the ascendent for many years.

As a legislator, his long experience upon the bench, his thorough knowledge of the law, and clear perception of the defects of the existing system, enabled him to effect many measures of reform in Alabama jurisprudence. Through his influence the common-law system of pleading was simplified and the judicature of the State rendered more uniform and expeditious.

In 1839, before the expiration of his term in the Legislature, he removed to Texas. His fame as a lawyer and jurist had preceded him, and he immediately commanded a large practice. He at first resisted all attempts to draw him into public life, but finally consented upon the earnest solicitations of President Lamar to accept the post of Secretary of State under his administration. He warmly

espoused the policy of annexing Texas to the Union, and brought all his influence to bear upon the accomplishment of that object. He was elected a member of the Convention of 1845, and introduced the resolutions accepting the terms of annexation proposed by the government of the United States. These were adopted, and the convention proceeded immediately to form a Constitution for the new State. Here again his legal knowledge and judicial experience enabled him to render most efficient service in the construction of the organic law, and those beneficent provisions in regard to homestead exemptions and marital rights which adorn the Constitution of Texas, and which excite universal admiration, are largely the work of his genius and influence. X

The merit of his services in the Convention of 1845 was duly recognized, and upon the adoption of the Constitution by the people in 1846, he was appointed by Governor Henderson one of the judges of the Supreme Court of the State, and from this time his life was devoted to the development of Texas jurisprudence. He held the position of associate justice eleven years, and until the time of his death, which occurred at Austin during the session of the court, on the 30th of November, 1856. }

His opinions are contained in the first seventeen volumes of Texas Reports. They are more numerous than those of either of his associates, and settled most of the questions of practice which arose during that time under the mixed system which obtains in the Texas courts. }

The life and character of Judge Lipscomb are kindling incentives to that honorable ambition which finds its satisfaction only in the distinguished performance of high public trusts, to that patriotism which derives more happiness from the faithful discharge of public duties than from the attainments of the most coveted private ends, and to that rectitude which finds its reward in the commendation of all good men, and in the smiles of Heaven which mirror themselves upon the unruffled surface of a clear conscience.

When such men die, it behooves us to pause and contemplate the instructive lessons which their lives have inscribed

upon the great chart of human existence, for the purpose of paying proper reverence to their memories, and to catch the noble inspirations which continue to emanate from the tracks of departed worth. To review and record the qualities of one who has reaped the highest esteem of his fellow-citizens, is a custom which finds its sanction through all ages, down to the very depths of antiquity, and to which we owe the preservation of the great lessons of virtue, the landmarks of greatness, and the beacons of fame which have given light to the generations of earth, and pointed mankind to a higher and nobler sphere.

✓ Hence, to cite examples of the different features of greatness is by no means a difficult task, but to analyze and interpret the different measures and varieties of qualities which enter into its composition is a task of another import, and we will find ourselves met by insuperable barriers at the very threshold of the investigation. There we will find Genius, with its dazzling train, mocking at every effort to discover its source, and by its side Wisdom, peering far beyond the superficial scope of vulgar gaze. There Honor's helmet flashes an effulgence which, but for its rarity, would kindle a philanthropy that would glorify the world; and there is Charity, distilling its soothing drops into the hearts of the unfortunate, and healing the festering ulcers of human woes. Memory is there with its tablet of indelible inscriptions. Perception is there with the glare of its penetrating glance; and there is Judgment, with the staff of reason in one hand and the plumb-line of justice in the other. There Virtue marshals her white-robed train, while hallowed Piety reigns the sceptered lord of all.

What pen can depict the characters of this gorgeous court? What ambassador from the realms of metaphysics can penetrate its secret councils and describe its rivalries and harmonies? Surely, we must retire from the labyrinthian threshold and await the denouement of the heralds of action. With this conviction let us return to the subject of this sketch, and confine ourselves to the contemplation of qualities whose sources we may not invade.

As a lawyer, Judge Lipscomb possessed every quality of

pre-eminence. He was thoroughly familiar with the fundamental principles of law, and skilled in all the details of the profession. It was the study of his life, and he traced every legal principal to its source. He loved the law as the grandest edifice ever erected by the mind of man, and as the receptacle into which has flowed the wisdom of ages. He recognized the truth of the saying of Sir Henry Finch, that "the sparks of all the sciences in the world are raked up in the ashes of the law," and he adopted the maxim of Lord Kenyon, that *melius est petere fontes quam sectari rivis* (it is better to seek the fountains than to intercept the streams). On the bench the career of Judge Lipscomb would have adorned the ermine of any country, and in any age. As conscientious and upright as Sir Matthew Hale, he possessed much of the penetrating vision and brilliant perception of Lord Mansfield, the equitable poise of Eldon and the intuitive judgment of Hardwicke. His decisions are delivered in a neat, plain and lucid manner. His style is pure without ostentation, his sentences forcible without verbosity, and his judgments fixed immovably upon the firm foundations of law. His quotations of authority are never profuse, but always go straight to the point of issue. While he had due reverence for established precedent, he took care to test it in the retort of his own logic, and to pass it through the crucible of his own judgment. His comprehensive and acute knowledge of general principles enabled him with or without precedent to apply the law with unerring hand to the vindication of justice. But these comments may be useless, if not tedious to the professional reader. The decisions of Judge Lipscomb speak for themselves. They are the best monuments of his genius; the brightest and most durable urn of his greatness. They glare with immortal splendor upon the pages of Texas jurisprudence, and to them let the professional reader address himself for the great lessons which they teach — lessons inculcating the example of an able lawyer, an honest man and a learned and upright judge.

Judge Lipscomb was a Christian, both in faith and in manner of life, and as a biblical scholar he had few supe-

riors. He delighted in social intercourse, and his gentle and agreeable manners and instructive conversation made him a welcome guest in every circle. If his countenance sometimes wore an expression of gravity, it was but the reflection of intense thought, and was dispersed at the least interruption of his meditations. He was a man of warm attachments and tender sympathies. He was twice married. He lost his first wife in 1841, and in 1843 was married to Mary P. Bullock, daughter of Dr. Thomas Hunt, of Austin, who survived him.

The home circle was to him an altar of pure devotion, from which continually arose the incense of domestic felicity. Hospitality and charity were among his most prominent qualities, and the best side of his character was turned away from public gaze. While these may perish with the hearts which they warmed and with the memories upon which they were inscribed, the legislative and judicial records of two great States bear everlasting testimony to his patriotism as a citizen, his ability as a judge, and his worth as a man.

“Fruits of a genial morn and glorious noon,
The deathless parts of one who died too soon.”

ROYAL T. WHEELER.

Chief Justice Wheeler was born in the State of Vermont in 1810. While young he removed with his father's family to Ohio, and there obtained a respectable education and prepared himself for the bar. Having obtained his license and being thrown upon his own resources, he emigrated in 1837 to Fayetteville, Arkansas, and became the partner of William S. Oldham, who was subsequently a judge of the Supreme Court of that State, and a Senator from Texas in the Confederate Congress. In 1839 he was married to Miss Emily Walker, an accomplished young lady of Fayetteville, and soon afterwards removed to Nacogdoches, in Texas, and formed a law copartnership with Kendreth L. Anderson, the Vice-President of the Republic. In 1842 he was elected district attorney, and in 1844 was promoted to the district bench, which made him also a judge of the Supreme Court, as that was then composed of the district judges sitting in banc.

When the State government was organized, in 1845, the sagacity of Governor Henderson discerned the ability and merit of the young jurist, and he was appointed one of the associate justices of the Supreme Court, and in 1851 was elected to the same position by the people. In consequence of an increase in the salaries of the judges in 1856, he resigned, in company with his associates, and was re-elected under the new system of emoluments; and upon the resignation of Chief Justice Hemphill, in 1838, to accept a seat in the United States Senate, Judge Wheeler was chosen chief justice of the Supreme Court, and held that position with distinguished ability until the time of his death, which occurred in Washington County, Texas, in the spring of 1864.

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As a lawyer Judge Wheeler was thoroughly versed in the learning of his profession. He was a close, attentive and apt student, and his knowledge was rooted in the very depths of the science, while the natural bent and quality of his mind led to a comprehension of the minutest features as well as the grandest outlines of jurisprudence. While at the bar of Arkansas he had made himself an efficient special pleader under the strict system of the common law practiced in the courts of that State, and he was quick to discover the points upon which the merits of a case hinged. His mind was too matter of fact in its bent and too exacting in its candor to indulge in the mere visions of imagination, and he disdained all its "flower-decked plats and blooming parterres." He was not distinguished as a rhetorician, but he knew how to command the minds and hearts of men, and had great power before a jury. These qualities seemed to have designed him especially for a great criminal lawyer, and his knowledge of criminal jurisprudence was pre-eminent. His mind seemed particularly constituted for sifting and weighing the circumstances which form the qualities of guilt and the varied ingredients of crime. But, notwithstanding these prominent characteristics, so full-orbed and luminous were his legal attainments that it is difficult to assign superiority to his knowledge in any particular department. He possessed a vigor of intellect, an inquisitiveness of mind, and a practicality of disposition which led him to look beyond the existence of the statute to an inquiry into the origin and reason of the law, and he had traced the principles of every branch to their source.

As a judge, Chief Justice Wheeler planted himself firmly upon principles and fundamental truths, and from these his mind, armed with the lance of acute penetration, clad in the mail of a sound judgment, and disciplined by a severe training and correct association, penetrated every combination of circumstances and defied every challenge of emergency. He detested fallacy and showed it no quarter, while his plain logic intersected ambiguity with the straight path of truth. As Sir Richard Steele said of Lord Chief

Justice Holt, "he always sat in triumph over, and in contempt of, vice; he never searched for it, or spared it when it came before him. At the same time he could see through the hypocrisy and disguise of those who have no pretense to virtue themselves, but by their severity to the vicious." He was a close observer, quick to read the hearts of men, to interpret their motives and to detect the springs of human action.

These accomplishments can not be said to be the work of genius, for Judge Wheeler was not thus indebted to nature for his gifts. They were the fruits of unceasing effort, of vigorous systematic application, a rectitude of purpose and a determination which nothing short of the achievement of the highest and noblest ends could satisfy. He commanded success and he deserved it.

Judge Wheeler possessed a kind and amiable disposition, and sought the attainment of justice by the most charitable means. The warp of his justice was woofed with leniency, and he tempered the rigorous requirements of law with the gentle mandates of equity, yet his vindication of right and truth was always prompt, pronounced and unequivocal.

His professional traits were fashioned in the mould of law, his moral in the cast of rectitude. The simplicity of his virtues admitted no vanity or affectation, and he enjoyed with like modesty the honors of his high office and the veneration of society; and while he was capable of strong prejudices when quickened by perverse opposition, a habitually serene temper asserted the benevolence of his nature. The qualities of his heart were not strained but flowed in gushing torrents from deep and unfailing fountains, and their exercise found among his friends and associates a reciprocity which but intensified their character.

The venerable Judge Robert S. Walker, a long and intimate acquaintance of Judge Wheeler, speaks of his private character in the following graphic terms:—

"Judge Wheeler was a man of a singularly rare combination of character. His presence was benign, and his manner frank and open, inviting approach, and cordial and

affable to all, but it forbade coarseness, levity or undue familiarity.

“He carried about him an atmosphere of purity and culture so marked in his countenance and conversation that it was felt as a living presence. In his intercourse he was free and congenial; his conversation was full of variety and interest, and free from frivolity; and he was always severely independent and sincere in the expression of his sentiments. He never allowed the forms of politeness or silence on his part to be construed as an apparent indorsement or seeming approval of a sentiment that was false in morals, but he never failed to leave the impression of his unequivocal opinion as to the right and the truth. His warm, confiding social qualities drew around him a wide circle of devoted friends composed of the purest and best of all classes and professions. He never pursued the acquirement of wealth, nor sought influence for the purpose of advancing himself. He coveted neither. His aspirations were far above the former, and his ambition was too high to be gratified through the agency of the latter. Success with him was nothing, if not achieved by merit rather than by the doubtful schemes of contrivance.”

The decisions of Judge Wheeler extend through twenty-six volumes of Texas Reports, and are characterized by a profound knowledge of law, a thorough comprehension of the facts in all their legal bearings, and by an exposition of legal principles, so lucid and logical that his views readily receive the homage of assent and satisfaction. His style is strong, vigorous and dignified without any effort at oration or embellishment, or seeming choice of expression, except to convey his ideas in the most forcible and cogent manner; and his opinions notably avoid the expression of mere *dicta* which affirm no principle authoritatively, and tend only to confuse and mislead the mind of the young practitioner.

While stern and unyielding in his views, he was averse to disputation, and maintained a respectful deference to those of his associates. His pure and polished professional

ethics cemented the most cordial relations between himself and the other members of the bench and with the bar. Mr. Justice West, an eminent judge of persons, as well as of the law, says: "During his long career upon the bench, Judge Wheeler frequently differed in his opinions from the other members of the bench, but owing to a constitutional sensitiveness which made him loth to controversy, he, on most occasions, contented himself with directing the reporter to note his dissent. At times, however, when his strong conviction of truth and justice overcame his abhorrence of debate, he would advocate his views in a dissenting opinion, rich in legal lore, and even eloquent in the vindication of truth against what he conceived to be the errors of precedent. On these occasions he disclosed that beneath his modest and unassuming exterior slept an iron will and an inflexible purpose, which nothing could swerve from the path of duty.

In these struggles he more than once arrested the current of judicial decisions, which by legislative enactments were made to flow in the channel he had marked out as the true course of justice. His dissenting opinions in *Coles v. Kelsey*, 24 Texas; *Sylvanus v. Walker*, 3 Texas; *Snoddy v. Cage*, 5 Texas, form epochs in our judicial history."

In politics Judge Wheeler was imbued with the principles of the old Whig party. He was, however, a warm advocate of annexation, and in 1861 ardently espoused the policy of secession as the only alternative that afforded any hope for the South. His mind was naturally inclined to the forebodings of melancholy, which had been increased by long and intense mental labor, and contemplating the clouds which hung over the future of his country and the prospects of his family, to which he was devoted, he yielded to the influences of despair.

It has been said that all great passions are born in solitude and nourished in retirement; and that they are tamed and degraded by the common intercourse of society, and utterly lost and extinguished in public companies, crowds, and assemblies; but in the instance of Judge Wheeler we

have a brilliant light, kindled in the blaze of the forum, shining with resplendent glare upon the bench, and shedding its beacon light upon all the affairs of men, waning away and extinguishing itself in the damp of despair — the noblest intellect mouldering in the rust of inaction and the canker of despondency. Judge Wheeler, in a fit of mental aberration died by his own hands; but the jurisprudence of Texas embalms his ability and his virtues in the golden urn of everlasting remembrance and veneration.

GEORGE F. MOORE.

George Fleming Moore, for many years chief justice of the Supreme Court of Texas, was born in Elbert County, Georgia, on the 17th day of July, 1822, and was the seventh son of his parents. While he was young his father removed his family to Alabama, and, being a prosperous planter, placed George in the University of that State, and subsequently sent him to the University of Virginia; but he was not a graduate of either. In 1842 young Moore began the study of law at Talladega, and in 1844 obtained his license and entered upon the practice of his profession. Being now dependent entirely upon his own resources, his ambition sought a more propitious field, and in 1846, being attracted by the glittering prospects of the new State, he removed to Texas and located at Crockett, where he found an ample scope for his genius and energy in the practice of a new and undeveloped system and in its application to the rapid growth of the country. He soon attained a prominent position at the bar, and in 1854, allured by the large legal business which centered at the State capital, he removed his office to Austin, but a year or two afterward settled at Nacogdoches, as the law partner of Richard S. Walker, and the firm became one of the most noted in the State.

In 1858 Messrs. Moore & Walker received the appointment of State Reporters, and prepared the twenty-second, twenty-third and twenty-fourth Texas Reports, which have been made by statute models for all subsequent issues. During the civil war Mr. Moore served as colonel of the Seventeenth Regiment of Texas cavalry; but on being elected in 1862 an associate justice of the Supreme Court, he resigned his office in the

army and accepted the position. When the reconstruction era of President Johnson began in 1866, he was again elected to the Supreme bench and was made chief justice of the State; but upon the abrogation and overthrow of the re-union policy of the President by the Federal Congress in 1867, he was removed from office by a supreme military authority, which swept away every function of returning concord from the South as being an obstruction to the schemes of the Republican party.

Judge Moore had maintained throughout the war a staunch and dignified position in support of civil supremacy and judicial authority, and in 1864 engaged in a conflict with the military power, which exalted his character, both as a judge and a patriot. He had issued writs of *habeas corpus* for the production of some citizens who were held in military custody, and doomed as sacrificial examples. These writs had been disregarded, and rising to the full height of judicial dignity and manly opposition to that which he considered an unwarrantable outrage upon the dearest and most sacred rights of a citizen, he declared his opinion in the *State v. Sparks, et al.*, 27 Texas, in terms of such scathing reprimand that the military authorities yielded obedience to his mandates, and the citizens were saved.

From the time of his removal from office in 1867 until 1874 he practiced his profession in Austin; and when the people in 1874 resumed control of the State government, which had been taken from them and supplanted by an odious military rule seven years before, he was again appointed associate justice of the Supreme Court, and upon the adoption of the Constitution of 1876, he was elected to the same position by the people. On the resignation of Chief Justice Roberts in 1878, Judge Moore was appointed by the Governor as his successor, and was soon afterwards elected chief justice of the State by more than one hundred thousand majority of the popular vote, and held this position until 1881, when, in consequence of ill health and impaired eye-sight, he resigned, and sought that repose from his long and irksome labors, so sweet to those,

who, full of honors and full of years retire from a long public service with a mind conscious of duty well performed.

In contemplating the character of Judge Moore we are dazzled by the uniformity and constancy of its glow. There are no jetting traits to serve as landmarks to the analysis. There are no conspicuous planets or brilliant constellations to arrest our gaze; no glowing meteors flash along the sky; no auroras or milky ways usurp broad tracks in the firmament; but the whole canopy, from the zenith to the horizon blazes with one common, uniform light, such as flows from the full, round orb of day. The qualities of his head and heart were in such constant and exact equipoise that it is difficult to determine which was the most vigorous of his virtues, or what was the chief mainspring of his action. No particular faculty of his mind seemed to claim superiority or assert predominance; and, as an advocate, if there was one trait which might be designated as the key to his success, it was the capacity of making a lucid presentation of his case — for presenting a concise, synthetical summation of facts, a forcible and convincing application of the law, for disrobing his adversary of all false colors and superficiality, and whittling the question down to the very hinge of fact and gist of legal merit. He possessed a keen perception, and his mind was disciplined by habits of correct association. His powers of analysis and abstraction were of a high order, and no complexity of law or complication of fact woven of the warp and web of circumstances or artifice could escape the glare of his penetration. He prepared his cases with great care, and fortified himself at every possible point of attack.

On his first appearance at the bar of Texas, he was noted for his sedate, dignified manner and studious habits. Free from the frivolities and indiscretions which usually attend one of his age and conscious powers, he steadily pursued the path of success, and his conduct was early impressed with the mould of experience. His energy was indomitable and his determination undaunted by any obstacle which untoward circumstance could throw in his pathway. Cer-

tainty followed in the track of his virtues, and he climbed with a sure-footed pace to the proud height of his professional eminence.

In December, 1870, he was licensed to practice in the Supreme Court of the United States, and his arguments in *Hanrick v. Barton* and *Cordova v. Hood et al.* before that tribunal are replete with skillful analysis and logical presentation. In the former he discussed the difference between the *jus in re* and the *jus ad rem*, and the distinction made by the courts in respect to the execution of deeds and contracts — the first being inoperative until completed and consummated, while the latter create obligations which may be enforced by appropriate judgment. He was successful in both of these cases, though the court was divided as to their merits.

Upon the bench, Judge Moore was a Cato of integrity, an Aristides of justice, and an Eldon of equity elucidation. He was perhaps the best chancery lawyer that had sat upon the Texas bench, and had he presided in courts of separate and independent chancery jurisdiction his decisions would not have disparaged the most eminent Lord Chancellor that ever directed the impressions of the great seal, but would have glowed with a lustrous purity, doctrinal soundness, and logical clearness unsurpassed by the most luminous decrees of Eldon, Hardwicke or Lyndhurst.

He was equally eminent for his thorough knowledge of the intricate system of Texas land laws, and during the seven years he was excluded from the bench by military power, his practice in land cases extended throughout the State. His decisions upon questions arising from these laws, upon questions of official responsibility, and his distinctions of the degrees of crime, form some of the most important features of Texas jurisprudence. While he maintained vigorously and successfully the sacred right of *habeas corpus* in *The State v. Sparks*, he also upheld in *ex parte*, Coupland, 26 Texas, the constitutionality of conscription as a means of national defense, and in *Keuchler v. Wright*, 40 Texas, he held that the courts could issue the writ of *mandamus* to the heads of the executive depart-

ment of the State government to compel proper performance of duty, which had been denied by a majority of the court in the case of *Bledsoe, Comptroller, v. The International Railroad Company*, which had been decided at the same term. His definition of express malice in *Farrar v. The State*, 42 Texas, and his distinctions as to what constitutes murder in the first and second degrees, are said to have elicited from Mr. Bishop the expression that they were the best he had ever seen. His dissenting opinion in *Henderson v. Beaton*, 52 Texas, in regard to the constitutionality and construction of the act organizing the Court of Commission of Appeals presents a clear view of the character and functions of that court, and of the power of the Legislature to provide means for the dispensation and promotion of justice.

As an orator, Judge Moore was not endowed with the highest gifts of eloquence, but he possessed to an eminent degree that which Demosthenes declared to be the chief ingredient of eloquence. He possessed "action;" not that which is confined to gestures of the limbs, or theatrical emotions of the body, but that action which indicates the sentiments with which we are inspired and impresses them into a rule of conduct, — an incentive to achievement, — a passion for duty, which engages the minds and convictions of others by its frankness and sincerity, and by the fervor of conscientious purpose. He was eloquent in the depth of his conviction, in the earnestness of his manner, in the logical train of his thoughts, in the force and power of his language, and in the moral mesmerism of the man. His arguments were always clear, logical and concise, and his oratory was more like a torrent which sweep, everything before it than that Ciceronian gentleness which glides upon the waves of conciliation. He depended more upon the firm rod of reason than upon the fickle wand of suasion, and gained the citadel of conviction by assault direct and full in front, rather than by the crouching maneuvers and circuitous paths of wile or allurements. He possessed a keen sense of honor, and was open and generous in all his

dealings, punctilious in his discharge of his public duties, resolute in the prosecution of every undertaking, and was all that Horace meant by his *justus et tenax propositi vir*.

Judge Moore preserved a pure and courteous professional ethics and a dignified judicial decorum. He blended in an admirable manner the stern features of the judge with the sympathetic attributes of the philanthropist. He was particularly kind in his demeanor towards the young members of the bar, and was always ready to extend to them a helping hand. His domestic and social qualities were as amiable and refined as his public and professional attributes were brilliant and elevated. He was married in Alabama in 1849 to Miss Susan Spyker, an estimable lady, whose qualities of head and heart eminently fitted her to be the companion of her accomplished husband, and who is still living to cherish the memory of his virtues. He died on the 30th of August, 1883, in the City of Washington, where he was spending the summer for the purpose of recuperating his health, which had been for some time feeble and precarious.

It is peculiarly sad to contemplate the death of a man of whom it is universally said by his fellow-citizens that he died too soon. But it is to the loss only that we should confine our regrets; for it is a just consolation in contemplating our departure from this world, that all the great and the good die, and that a pathway marked by the footsteps of the Savior of mankind and trodden by countless myriads of bright and shining feet, surely can not be a rough and unpleasant path; but we have every reason to believe that death is but the curtain of life dropped behind us, before which expand the realms of eternal light. When our first parents beheld the setting of the first day's sun, saw it leaving them, it might be, forever, and beheld the darkness of the first night gathering around them, with what indescribable wonder and dismal forebodings they may have gazed upon the novel scene. But as it grew darker and darker, when they turned their eyes upward, what a beautiful panorama gradually unfolded to their view. The sun was gone, but lo! new-born Cynthia and

the beautiful stars, smiling in the mirth of their morning song. If, then, night can reveal such beauty, what inconceivable glory may not deck the canopy of death.

These reflections are awakened by the contemplation of the death of him who forms the subject of this sketch. He walked through the world in the path of duty and conscious rectitude, and in the faith of piety, down to the brink of the valley, and when he stepped forth into its shadows, he no doubt caught the promised visions which flash from the blessing of the faithful servant.

A. J. HAMILTON.

Andrew Jackson Hamilton, one of the ablest men the Texas bar has ever produced, was born in Madison County, Alabama, on the 28th of January, 1815, and was admitted to the bar of that State in 1841. His educational advantages were the best that the schools of the new country afforded, and his preparation for the bar was inspired by a natural genius and ambition.

In 1846 he emigrated to Texas, and located at Lagrange, where he attained such eminence in his profession that in 1849 he was appointed by Governor Bell attorney-general of the State, and from that time made Austin his permanent residence. He served as the representative of Travis County in the Legislature of 1851, and again in 1853, and was an active and zealous promoter of all measures for the general welfare of the State. In 1856 he was an elector on the Buchanan ticket, and in 1859 was elected to a seat in the United States Congress, as an independent candidate, in opposition to General T. N. Waul, the regular nominee of the Democratic party. He was a strenuous opponent of the policy of secession, which he considered impolitic and unjustifiable, and retained his seat in Congress after the other members from the seceded States had returned to their constituencies. He returned to Austin in the latter part of 1861, and was made the Union candidate for the State Senate, to which he was elected; but Texas had now cast her lot with the Confederacy, and he declined to take the required oath of qualification.

In 1862, being still opposed to the purposes and progress of the war on the part of the South, he left the State, and, making his way through Mexico, repaired to the City of

Washington, and was immediately appointed brigadier-general of the Texas troops in the Union service. In 1865 he was made Provisional Governor of Texas by President Johnson, as the most suitable person he could find in the State to effect his conservative plan of reconstruction. Governor Hamilton entered upon the duties of this office with an ardent desire to re-establish as easily and speedily as possible the former relations of the State to the Federal Union; but in 1866 he was appointed an associate justice of the Supreme Court, which was a field equally compatible with his taste and talent. He was still, however, deeply interested in the method and manner of reunion, and was a prominent member of the Reconstruction Convention of 1868, in which he was the author and chief promoter of the liberal electoral bill and franchise measures, which were engrafted in the new Constitution. In 1870 he was the Conservative candidate for Governor, but was defeated by Judge E. J. Davis, the Republican nominee, in a contest so close as to require the intervention and decision of the military authorities. Returning now to the seclusion of private life, he eschewed any further active participation in the political events of the period, and, falling into a decline of health, died in Austin during the month of April, 1875.

Governor Hamilton was a man of great ability and a profound lawyer, and his professional career was remarkably successful. He was naturally endowed with uncommon powers of intellect, and his knowledge of law was scientific and thorough. His management of his cases was methodical and practical, and commanded every element of honorable success. While he embodied all the eminent qualities of a great lawyer, the characterizing features of his eminence, taken in the abstract, were asserted in a correct judgment, an accurate comprehension, and a perception that bordered upon intuition. His capacity for close discriminations and subtle distinctions, the apt and forcible communication of his ideas, the strength of his logic, the purity and simplicity of his diction, unfolded the most abstruse doctrines and lurking points to the view and under-

standing of common sense, while the depth and pathos of his convictions and the candor of his arguments impressed his opinions upon the minds of the most obstinate and indifferent.

To his clients he was a faithful friend and counselor and deceived them with no apparitions of false hopes or specious inducements to unjust and fruitless litigation. But he was sincere and conscientious in his dealings with them, and they trusted him with an implicit faith.

As a judge of the Supreme Court he brought to the bench not only the qualifications of a thorough lawyer, but the requisites of an eminent jurist. His decisions, though comparatively few, are noted for their learning, dignity and force, and embrace some of the most important questions that arose during that unsettled period under the reconstruction laws. Chief among these is his opinion upon the question of *ab initio* rendered in 1868 in the case of *Luter v. Hunter*, 30 Texas, 690, and in *Culbreath v. Hunter*, 30 Texas, 712, known as the Sequestration Cases; in which he held that the States composing the Confederacy occupied a higher ground than the Confederate government, having been in their origin peaceful, legitimate and constitutional; that they continued to exist notwithstanding the war without a hiatus or interregnum, and that the United States government had not interfered with the mere civil laws of the States, whether enacted before or during the war, except as to such laws as necessarily resulted from the war and such as were unconstitutional, or in hostility to the United States.

It would have been well, indeed, for the interest of the whole country, if the doctrine enunciated in these cases had been accepted by the dominant party. Ten years of political chaos and stagnant blank in the history of the South would have teemed with prosperity, and the hostility of the heart would have ceased with the hostility of the sword.

Governor Hamilton was equally gifted as a politician, and his short career in Congress was characterized by a statesmanship which ordained him to a position of great influence

and usefulness in that body, had the star of Texas retained its peaceful glitter in the banner of the Union. He was sensitive of the wrongs and grievances of his section, and, while he acknowledged that revolution was justifiable and proper as a remedy for oppression, he differed from the great majority of the Southern people in regard to the right of secession, and believed that the constitution was the great arbiter and palladium of American liberty, and that all wrongs could be adjusted by it and settled within the Union.

He contended that if the right of secession existed at all, it was a reserved right, and that reserved rights were such as existed prior to the formation of the constitutional compact; that no such right could have existed anterior to the adoption of the constitution, and that every right was affirmatively provided for in that compact either in express or general terms.

At the close of his able speech on the state of the Union delivered in the House of Representatives in February, 1861, he said: "I care not for myself. I have made up my mind at the beginning of this trouble never to pause in my exertions because of the condition in which it would place me for the time being, either here or at home. I have not allowed one single motive of selfishness, if I know my own heart, ever to interfere with the exercise of what little judgment I have been able to bring to bear upon these great questions. I am solemnly impressed, however, with the condition in which I actually find myself. In traveling hither from my home, more than two thousand miles distant, my foot pressed no spot of foreign territory. My eye rested on not one material object during my journey that was not a part and parcel of my country, as I fondly deemed it. When we assembled together, as far as I know, every State and Territory was represented upon this floor. The great fabric of the government was then complete; but now, how changed! When I go home it will be to find my pathway intercepted by new nationalities. Without ever having wandered from my native land, I must traverse foreign countries if I would return.

“I might be excused for doubting my own identity. Surely I may be pardoned for having involuntarily prayed that this might be a troubled and protracted dream. Yet it is too true — too many evidences force conviction of the sad reality. But a few days past, the noble temple of American liberty stood complete in all its parts — stood in all the majesty of its vast proportions, and in the glory of its apparent strength and beauty of construction; not a pillar missing nor a joint dissevered. And its votaries were gathered about the altar, worshiping, as was their wont, with hopeful hearts. Forebodings were felt and predictions made of the coming storm, and the destruction of the temple. And the storm has come, and still rages; the temple still stands, but shorn of its fair proportions and marred in its beauty. Pillar after pillar has fallen away. And while its proud dome still points to Heaven, it is reeling in mid-air like a drunken man; while its foundations are shaken as with an earthquake. Yet there are worshipers about the shrine — and I am one of them. I have been called by warning voices to come out and escape the impending danger. I have been wooed by entreaties and plied with threats. But neither entreaties nor threats, nor hope of reward nor dread of danger shall tear me away until I lay hold of the horns of the altar of my country, and implore Heaven, in its own good time, to still this storm of civil strife; and, through such human agency as may be best, again uprear the fallen pillars to their original position, that they may through long ages contribute to the strength and beauty of the noblest structure yet devised by man.”

These were his abiding sentiments, and while he may not have approved of the harsh measures of reconstruction forced upon the South by the Federal Congress, he bent all his energies to fashion the affairs of Texas in the mould of Federal requirement, and in conformity with the Constitutional amendments.

He did not think that the great mass of negroes in the South were qualified to exercise the right of suffrage, but he thought it unwise to exclude them from political priv-

ileges on account of race or color. Progress, he said, was the great law of mind under a free government, and he did not believe that any policy could be enduring or permanent in this country which was based upon accidental circumstances and the traditions of prejudice, instead of being founded upon the eternal principles of truth and justice.

Governor Hamilton was bold and fearless in the advocacy of his principles, and in the execution of his purposes; yet he was modest in his deportment, and kind and courteous in his bearing. He was a man of pure morals, and possessed a kind disposition and charitable heart. In private and social life he was highly esteemed by his friends and associates, and was a man of great personal popularity.

LEMUEL DALE EVANS.

The subject of this sketch was born in the State of Tennessee in the year 1810, where he studied law and was admitted to the bar. He removed to Texas in 1843 and settled in Fannin County, which he represented in the annexation Convention of 1845, and of which he was a prominent member. In 1855 he was elected to represent the eastern district of Texas in the United States Congress. He was opposed to secession and during the war adhered to the cause of the Union; but took an active part in endeavoring to restore the relations of Texas to the Federal government upon the basis of conservation and moderation, and was a member of the Reconstruction Convention of 1868. When all the officers chosen by the people were removed by military authority, he was appointed in 1870 chief justice of the Supreme Court, which position he held until the expiration of his term in 1873. In 1875 he was appointed United States marshal at Galveston and held that office until the time of his death, which occurred in the City of Washington, on the 1st of July, 1877.

In the Convention of 1845, when the fifteenth section of article seven of the Constitution was under discussion, which required the Legislature to provide for the trial of cases by arbitration, upon the amendment offered by Mr. Howard, "when the parties shall elect that method of trial," Mr. Evans said:—

"I am opposed to the amendment offered by the gentleman from Bexar, and decidedly in favor of the section as it now stands. I have contemplated going further; as I know, however, that I should be opposed, I have made up my mind to be content with voting for the section as it stands. I shall not assail the motives of lawyers; but they are

wedded to a certain system of settling disputes, by which they live, and draw into their pockets a large revenue ; and perhaps they can not view the question in its proper light. Now I do not want to excite any ridicule against myself, but I will state what I candidly believe, that the whole contrivance of courts of judicature is a fraud upon the community ; the whole system is an invention of the darker ages of the world and productive of the greatest injury. I take this position, that there is no question of right or wrong which a savage is not as competent to decide as the ablest judge in the land ; no question which affects the rights of property or the person, which the untutored savage can not determine as well as a Story or a Marshall. And why ? Because questions of right and wrong depend upon feeling, and not upon reason. A man that feels right, no matter how uncultivated his mind may be, is as good a judge of such matters as the most learned men that ever sat upon the bench. If this were not the case, there could be no human responsibility in this world or the world to come. I will take another position : that any man who teaches your country schools, and understands the common laws of syntax, is as well qualified to understand the constitutionality of the law as a Daniel Webster. Why ? Because any sentence in the English language, whether it be found in a law-book or in the Bible, is to be construed according to the rules of grammar. I know that lawyers have a way of construing the former for themselves. I know that they have their particular phrases, and words with peculiar meanings, which the common people can not understand. And here is the fraud of the whole system. Let a plain law be passed. Say the lawyers, no man can write a law plain enough for the common people to understand. It is referred to a court to get the legal meaning of its terms ; the court weighs the terms, as they call it, and settles their meaning. How long does it stay so ? Until they can get two men to fall out about the decisions, and then they get a court to decide a case already decided. The court then enforces the decision, or overrules it. There are now twelve hundred overruled cases in the common law. The

world can not contain the books of legal reports. The ablest men in England and the United States, have ascertained to a mathematical certainty that the fees of lawyers and the costs exceed greatly in amount the value of the things in controversy. Take all the law-suits now in progress in the United States, or the State of Texas, value the property in its dollars and cents, and you will find that the cost of litigation exceeds the value of the things litigated. Ought we not, then, to adopt some other system? And there is no other but this of arbitration. You can settle all your differences by arbitrators without costs; for then the lawyers do not pocket large fees, and there are no officers who live upon litigants. I am friendly to the system, because I have seen it in active operation. I have lived in countries where there were no law-suits; where every difficulty was settled by the friendly interposition of neighbors. The peace-maker lived there; the lawyer did not. And no difficulty resulted from this system. The members of the Baptist Church settle all their differences by arbitration; the Methodists all theirs; the Quakers all theirs by arbitration. If this system prevail, you will find men in every neighborhood, able and Christian men, who would be proud of the character of arbitrators and peace-makers among their fellow-men."

It would certainly be well for the best interests of society, if the principles of morality inculcated by the *Golden Rule* and presumed in this argument, could be established as the law of the land, and practically enforced in the ordinary transactions of life; but such a rule has been found to be replete with difficulties, and absolutely inapplicable and inadequate to the wants and wishes of society. The doctrine of compulsory arbitration was rooted in the early laws of Texas, but formed a blank feature of its jurisprudence. No suit could be maintained until the matter in controversy had been first submitted to the arbitration of *buenos hombres*, and a certificate obtained from them that the difficulty could not be settled by arbitration. The Mexican laws also required that *conciliation* should first be attempted by the interposition of two

conciliators, who had power to select a third, and their certificate of the fact was requisite to the commencement of an action. But the Anglo-Saxon settlers of Texas declined to submit their disputes to such arbitration, and resorted to the custom of simply obtaining the certificate in order to comply with the law. Not one case in five hundred was settled by arbitration. The principle presumes a standard which practical morality and voluntary justice has never yet attained in any community, and it is feared, never will, until the passions and frailties of men are subjected to more powerful moral influences and restraints than any rule of human conduct has yet been able to devise and enforce

PETER W. GRAY.

The subject of this memoir was born in Fredricksburg, Virginia, in the year 1819. His father, William Fairfax Gray, removed his family to Texas while his son Peter was but a mere youth, and served as clerk of the House of Representatives of the Republic in 1837. He was subsequently district attorney, and held that office at the time of his death in Houston, in 1841.

Peter W. Gray was chiefly reared and educated in Houston, studied law in the office of his father, and succeeded him as district attorney. In 1846 he was a member of the first Legislature of the State, and his services in that body were distinguished for the highest efficiency. He was the chief author of the practice act, which eliminated and excerpted from the mutually repugnant systems of the civil and common law the clear and well defined method of reaching the merits of a case, which led to the present excellent systems of pleading and practice in the Texas courts.

He was soon afterwards appointed judge of the Houston district, and so learned, impartial and just was the manner in which he performed his judicial duties, that he was characterized by Chief Justice Roberts as "the very best district judge that ever sat upon the Texas bench."

As a lawyer Judge Gray attained early in life a high standing at the bar, and was distinguished for his astuteness and vigor, and for his solid professional accomplishments. His knowledge of the law was profound, and he was proficient and practical in the application of principles. His mind was highly analytical, and he was expert in eliminating truth from the speciousness of circumstances. Subsidiary to this, his love of justice and abhorrence of wrong

prompted his best exertions in the establishment of legal right and equitable principle. He was ardent in his devotion to duty and conscientious in his professional dealings, which engaged the confidence of his clients and the esteem of the people. He was thoroughly familiar with Texas jurisprudence, and his knowledge of the statute law and of the import and reason of the decisions of the Supreme Court, made him a safe counselor and a successful lawyer.

These qualities, enhanced by his habits of self-reliance and independence of thought, responded to the requirements of an eminent judge and attained for him the distinction upon the bench so generously canonized by the eulogy of the chief justice.

During the war, Judge Gray represented the Houston district in the Confederate Congress, and was a staunch supporter of every measure for strengthening the arms and promoting the interest of the Confederacy. When hostilities ceased he returned to Houston and resumed his practice, endeavoring by his example and counsel to re-establish the order of peaceful pursuits and ameliorate the condition of his people.

In February, 1874, he was appointed an associate justice of the Supreme Court, to fill a vacancy occasioned by the resignation of Judge W. P. Ballinger, who had been but recently promoted to the bench, and, though in feeble and declining health, he responded to the call for his services and entered upon the discharge of his judicial duties. But soon finding that he was physically unable to perform the functions of his high office, and being unwilling to leave the court with an even number, which might embarrass the course of justice, while he sought to repair his health in retirement, he resigned his seat on the 18th of April, having held the position but two months, and, retiring to his home in Houston, died on the 3d of October, 1874.

MICAHAH HUBBARD BONNER.

This remarkable man and eminent judge was the son of Rev. Wm. N. Bonner, a Methodist minister, and was born in Greenville, Butler County, Alabama, on the 25th of January, 1828 ; but in 1836 removed with his father's family to Holmes County, Mississippi. His early education was obtained from the common schools of the country and completed by an irregular course at La Grange College, in Kentucky ; but he possessed an aspiration for knowledge which no circumstance of his youth could suppress, and an ambition to achieve a name and a place among men undaunted by any prospect which the future could present to his view. Having prepared himself for the practice of law, he was admitted to the bar at Lexington, Mississippi, in 1848, and the next year, being attracted by the allurements which the new fields of the West offered to enterprise and genius, he emigrated to Texas and began the practice of his profession at Marshall, in an office built with his own hands ; but soon afterwards removed to Rusk, in Cherokee County, and formed a copartnership there with the distinguished J. Pinckney Henderson, who, in view of his great talents and success, was justly considered as the head of the Texas bar. This association afforded to Mr. Bonner at once the field to which his energy and genius were adapted and which his ambition had coveted, and he now entered upon that brilliant and successful career at the bar which finally raised him to the highest position upon the bench. This partnership continued until General Henderson was elected to Congress, after which Mr. Bonner practiced alone for some time and then associated with his brother, F. W. Bonner ; but so eminent and widespread was his reputation for legal learning and ability, and his fine social qualities and per-



M. F. Demmer.

sonal integrity had rendered him so popular, that, in 1873, the lawyers of the Seventh District, of which he was not a resident, but which was already within the scope of his practice, unanimously petitioned for his appointment to the bench of that district. This was effected, and he then removed to Tyler, which was his place of residence during the remainder of his life.

Upon the bench Judge Bonner exercised in the highest degree the ability and qualities which had raised him to that position, and in 1874 Governor Coke reappointed him to the same judgeship, which he held until the adoption of the Constitution in 1876, which provided for an elective judiciary, and was then elected to the same office by the people. In 1878 he was appointed by Governor Hubbard an associate justice of the Supreme Court, to fill a vacancy occasioned by the resignation of Chief Justice Moore, and was chosen to this position by the people at the ensuing election. At the expiration of his term he declined to be re-elected and returned to the bar, preferring the duties and more remunerative emoluments of a large practice.

Judge Bonner possessed a vigor, perseverance, and inquisitiveness of mind which permitted nothing to pass from under his observation without his thorough comprehension of its character; and to these trained habits of sensation and perception was added a well regulated judgment. While these qualities will assert their superiority in whatever sphere they may be exercised, they are, of all others, the most important qualifications for success at the bar.

As a lawyer, Judge Bonner was profound and exact. He was methodical and laborious in the preparation of his cases, and was always well armed with precedent and authority. He was cautious and deliberate in assuming his ground and surveyed with care every inch of the field before he rushed to the attack or planted his lines of defense; hence there was a fixed precision—an engaged certainty attending the positions he took, which no skill of sophistry could shake. His judgment was intuitive and his logical powers spontaneous. He rarely indulged in the

lofty strains of rhetoric, and never in impassioned challenges of applause. But while his oratory was usually devoid of ornamentation, it was forcible, logical, and laden with argument. He readily perceived the main points of a question and addressed himself to the gist of the controversy—a rule which commends itself both by its utility and the sound sense by which it is dictated, and which, if more universally observed, would greatly enhance the expedition of the courts and the attainment of justice, while it would often lift a heavy burden from the patience of both judge and jury.

Another feature, which added greatly to Judge Bonner's success as a lawyer, was his uniform placidity and good nature. While stern and immovable in his convictions and in the positions he had assumed, his professional ethics were marked by a cultured suavity which preserved the most cordial relations between him and the other members of the bar, and, as has been said of another, he wielded the club of Hercules wreathed with roses.

In addition to his large and well stratified stores of legal knowledge, the vigorous and active mind of Judge Bonner had gathered resources from every branch of science. While he delighted to delve in the rugged field of his profession, his sentimental nature and refined taste collected also the gems of romance and the flowers of æsthetics; yet he never neglected the realities of life for the mere visions of fancy. His attention was attracted but not beguiled by that literary curiosity which often allures a man of genius from his chosen pursuit, and engages his powers in the wasting diversions of inutility. Capable of great application and full of the ardor of a versatile genius, he devoted himself with severe restraint and indefatigable zeal to the attainment of all useful and refining knowledge.

But it was upon the bench that he wore his brightest laurels. It was here that his fearless independence of character in thought and action, his uncompromising regard for truth and justice, and his profound knowledge of law, were most strikingly exemplified. He was eminently gifted with the power of methodical and accurate dispatch, and,

as a district judge, the business of his court was conducted with the current smoothness and uniformity of a well regulated machine. If he hesitated, it was but to assure himself of that which was right and lawful, and then his firmness of character and conscientious conviction permitted no unnecessary obstacles to be thrown in the path of expedition. His court was a sanctum of dignity and decorum. But whilst he maintained with scrupulous and exacting regard the sanctity which should always surround the altars of justice, he was not austere; but his official demeanor, like his social intercourse, was clothed with the graces of culture and Christianity.

As a judge of the Supreme Court, his diligence and capacity for patient and laborious research left no field unexplored in his search for principles and precedents which nestle in the dictates of truth and equity, while his learning, his powers of analogy and parity of reason directed their application with unerring fingers and enabled him to rescue justice from the most specious claims of wrong. The language of his decisions is that of a thorough legal scholar, and sparkles with the imprint of a clear mind, an upright heart and a pure conscience. It would be gratuitous service to the profession to attempt to cite the important points in his opinions. With these the gentlemen of the Texas bar are already familiar. They settle many important questions and establish some of the principle features of Texas jurisprudence.

In private life Judge Bonner was amiable and refined. Like Lord Chesterfield, he considered politeness the lubricator of society, and to smooth the pathways of others he recognized as the great duty of man. This sentiment, quickened by his nature, and intensified by the love which he bore to his profession, enlisted his especial sympathies and services in behalf of those who sought its pathway to success and prominence, and the young lawyer found in him a friend who delighted in efforts to promote him. He was a fond husband, a doting father, and a devoted friend, and the golden chain was linked with the jewels of domestic felicity. He was married at Marshall, in 1849, to Miss

Elizabeth P. Taylor, daughter of Dr. Job Taylor, a lady in every respect worthy of the character of her husband, and who, no doubt, afforded him that encouragement which only the smiles of loveliness can inspire.

On his retirement from the Supreme bench in 1882, Judge Bonner resumed his practice at Tyler, and at the request of many of his professional friends, and being instigated by a liberal encouragement, he began the preparation of a work to contain a compendium of the rulings of the Supreme Court of Texas from the earliest period of its organization; but his labor was prevented by declining health, and he died on the 28th of November, 1883.

Judge Bonner was of a decidedly religious turn of mind, and early espoused the cause of Christianity. His life was modeled by the training which he received from pious parents, and he attributed with reverential pride his early and lasting victory over temptation especially to the hallowed influence and teachings of his mother. He was from his youth a strict member of the Methodist Episcopal Church, and died in the communion of that sect.

The life of Judge Bonner was a noble commentary upon the value of amiability and gentlemanly traits of character, and impressed the lesson that a mild temper, a uniform decorum and moderation were virtues compatible with the greatest attainable success at the bar and with the preservation of the highest dignity upon the bench, as well as in the social circle and the ordinary intercourse with men; but although he was fond of society, he never indulged in either the social glass or the social game, and, while guarding with a drawn sword every avenue of moral temptation, he permitted no approach to his judicial favor. The following letter from a railroad official upon his elevation to the Supreme bench shows that he extended this sentiment even to that which may now be an innocent custom:—

“PALESTINE, TEX., Dec. 28, 1878.

Hon. H. M. Bonner, Tyler, Tex.—

MY DEAR SIR:—Returning from Galveston, I have at hand yours of the 24th inst., with inclosure of pass returned. We sent the pass to you for the reason that it is customary

for railroad corporations to extend such courtesies to the highest officers of the State government. We highly appreciate your sentiments upon the subject, and feel that in your elevation to the high office you fill, private citizens and corporations have alike common cause for satisfaction. * * *

Very truly yours,

[Signed]

IRA H. EVANS.

While it was Judge Bonner's custom to treat in this way all such proffers from corporations and individuals, his charities were large and open-handed and untainted by any element of ostentation. They sprang from the dictates of a pure heart and a love of virtue, and afforded as much pleasure to him who gave as to him who received them. A bright Mason, he practiced the hallowed precepts of faith, hope and charity, which the ancient order so beautifully and forcibly inculcates; an exemplary Christian, he made the teachings of Scripture his rule of conduct; a learned judge, his knowledge was subsidiary to his moral fortitude. His addresses to the grand jury were models of legal exposition and moral commentary. They were elevating to the bar, admonishing to the people, and an honor to judicature.

IMPORTANT SUGGESTIONS OF JUDGE BONNER IN REGARD TO REFORMS IN THE JUDICIAL SYSTEM.

A PROPOSED AMENDMENT TO OUR STATUTE OF TRESPASS TO TRY TITLE.

[Suggestion Number One.]

One of the greatest problems now engrossing public attention, is to devise a more economical system for the administration of our State government; not a parsimonious, "penny-wise, pound-foolish" system, but one which will accomplish the desired end on a sound and proper basis. This and a few succeeding papers are most respectfully intended to invite reflection and suggestions on the part of the members of the profession, to whom such questions more particularly pertain, to some needed reforms in our judicial department, which, it is believed, will greatly lessen the delay and expense of our courts. This reflection and in-

vestigation are the more important now, in view of the approaching session of our Legislature, at which it is proposed to revise our whole system of laws, both civil and criminal. This work should be done, if possible, after such careful thought and deliberation, in consideration of the mischief to be remedied and the object to be attained, as will insure a system which will avoid that great evil of modern legislation — frequent changes of existing laws, by which we fly by sad experience to greater ills, and which has given rise to the maxim, that the world is governed too much.

It is, however, by no means intended to encroach upon the work of the able and learned commission appointed to revise our laws, nor to indicate anything like a general system, but simply, by a few illustrations of supposed defects, to call attention to the necessity and importance of the labor which has been intrusted to them, and thus give assurance of our earnest co-operation in the great work of reform. Neither infallibility nor entire originality is claimed for the suggestions which may be made, but, as before stated, the object desired is to awaken thought and investigation.

The first question to which attention is invited is the importance of an amendment to our statute of trespass to try title. With the introduction of the common law there was an express provision that thereby the common-law system of pleading was not adopted. Our act of trespass to try title, by which all the fictitious proceedings in the old action of ejectment were abolished, and by which the controversy that had for so long been protracted between those persistent litigants, John Doe and Richard Roe, was finally terminated, was a much needed reform upon the old common law. But so much of the act as provided that the defendant shall not be required to put in any other plea than that of “not guilty” is contrary to the general policy, if not thereby impliedly repealed, inaugurated by our subsequent legislation and judicial construction, which seek to make our system one of special pleading. As stated by Mr. Justice Wheeler, in *Mimms v.*

Mitchell, in the very first volume of our reports: "But, with us, neither the distinctions of the forms of actions nor the general issues exist; but our pleadings really are, or intended to be, what the English pleadings are defined to be — the statement in a legal and logical manner of the facts which constitute the plaintiff's cause of action, or the defendant's ground of defense, or the written statement of those facts intended to be relied on as the support of the party in evidence."

This statement is necessary to the ends of justice, so that the parties may be advised of the true issues, and come prepared to meet them with the testimony. If necessary in ordinary cases, how much more so in that class of litigation which involves the title and possession of the lands and homesteads of the country. But, under the plea of "not guilty," the defendant can attack his assailant, as from behind a masked battery, without previous warning. In this way important rights are sometimes lost under issues raised for the first time on the introduction of testimony, which, had they been presented in the pleadings, could have been successfully met and resisted. Like objection arises to the pleadings of the plaintiff, when, as is usually the case, it is but a general statement of the legal ownership to the land in controversy.

It is submitted that the statute should be so amended as to require both parties to deraign in their pleadings, at least from a common source in proper cases, their respective titles. This would be consistent with the true and original purpose of all good pleading, and which our system, with perhaps this single exception, was designed to accomplish; and would frequently enable the court to decide on demurrer the legal effect and superiority of the respective chains of title, which now has to be done in the charge to the jury after all the delay and expense of a trial upon the facts. This change, it is believed, in its practical effect, would not be pleading the evidence in the case, more than is now required in setting out the particularity of the claim declared upon in a suit of debt.

THE NECESSITY OF AN APPEARANCE TERM TO DETERMINE THE ISSUES
OF LAW.

[Suggestion Number Two.]

That government is the best which affords to its citizens the greatest protection to the rights of person and property, and the most economical and speedy legal remedy for the violation of those rights. A nation's principal wealth consists in that of the individuals who, in the aggregate, compose the nation, and the great source of this wealth is the industrial resources of the country, that which produces and which can be utilized for both public and individual gain. In calculating the expenses of our courts we should consider, not only the positive loss in the actual amount of indebtedness thereby created, and which has to be paid to jurors, witnesses, etc., but also the negative loss to this producing interest by the withdrawal of labor from the several industrial pursuits.

A proper consideration of the subject in all its relations, and particularly in the loss to the agricultural portion of the community, from which our jurors and witnesses principally come, will show that the indirect expenses of our courts perhaps exceed the direct expenses. A penny unnecessarily spent, when it should be made, is two pence lost.

To ascertain, then, that system which will best enable us to properly carry on the courts with the least attendance of jurors and witnesses deserves the profound consideration of our wisest statesmen. It is confidently believed that great reforms can be made, by which the expenses of our courts can be reduced at least one-half what they now are under our present system. One of these, it is submitted, is to have an appearance term of our District Courts for the purpose of determining the issues of law, at which neither jurors nor witnesses are required to be in attendance, and no judgments to be rendered except those taken by default and consent. Rule 24, for the District Courts, recently adopted by the Supreme Court, went as far in this direction as ex-

isting statutes permitted, and has already been attended with good results, though it falls far short of much that could be accomplished under proper legislation. It is not intended that there shall be a separate appearance term, but that the first succeeding court, after citation served, shall be the appearance term for all the cases returnable thereat. Practically, it will cause no delay to litigants, for under our present practice a contested case is very rarely tried at the term to which the same is brought.

If the judge presiding needs the assistance of learned counsel and a reference to authority, at any stage in the progress of a trial, it is when he has under consideration the issues of law upon demurrer. In the courts of last resort these very questions are determined upon full argument, and printed briefs from eminent counsel, with access to extensive and selected libraries, after full time for research and deliberation, and upon consultation with learned and experienced brother judges. But in the *nisi prius* courts, they have to be decided by a single judge, and at comparatively great disadvantage under the most favorable circumstances. The issues are not narrowed down and presented in brief, pointed proportions, as in the courts of last resort, but are first presented in the pleadings, generally in a voluminous, crude mass, from which the true propositions of law which underlie the case have to be evolved. This has to be done in the midst of the hurry and confusion of the court, perhaps not upon full or satisfactory argument, often in counties where full sets of our own State Reports even are not accessible, and when impatient jurors, witnesses, litigants, and sometimes impatient lawyers, when not engaged in the particular case on trial, are anxiously in attendance. If the judge presiding, in the effort to discharge his sworn duty, listens patiently to argument, and endeavors, by a proper determination of the legal questions in the first instance, to avoid an error which, if fatal here, will be fatal to all subsequent proceedings, he is called a "slow coach," and denounced for permitting the lawyers to indulge in argument, and is adjudged to be unqualified for his position. If, however, instead of fearlessly endeavoring to discharge his duty

he seeks popularity by a false show of profound learning, which enables him to decide, erroneously, difficult questions upon the moment and without argument, he is in fact not only unworthy of his position but makes waste by making haste, in having the cases remanded to again undergo all the delay, expense and uncertainty of another trial. Perhaps unreflecting parties would not so frequently denounce the court and lawyers for patient investigation and seemingly unnecessary argument were their own cases on trial. Would it not seem arbitrary indeed to them, in the trial of a case in which their lives or homesteads were involved, should the court, in the effort to make the very equivocal reputation of being a fast judge, order their attorneys to set down because the time of the court was too precious to do one of the principal things for which the tribunal was constituted,—to hear argument, and thus summarily decide, perhaps erroneously against them? From this standpoint the true mission of the court and lawyers would be viewed in entirely a different light. As said by that great equity lawyer, Lord Eldon, in *Ex parte Pease*, 1 Rose, 237, “I know a great deal of time is consumed in hearing argument, but a great deal of justice is the result.”

A remedy for the seeming delay in our courts and which, perhaps, in too many cases, is real, and which would save the now necessary expense of attendant jurors and witnesses, and prevent the hurry and consequent liability to err in the determination of the issues of law, and by which a happy medium between unnecessary delay and undue haste can be attained, is to have the appearance term above recommended. This docket will be called after all the cases in which jurors and witnesses are required have been decided, and these parties have returned home, and when the judge, with none necessarily in attendance except the lawyers, can, after full argument, and when the desired amendments have been filed, finally settle the true issues of law in the case. This being done on more mature deliberation, there will be less liability to err and to have the judgment reversed and the case remanded for another trial. In this way many issues before supposed to be material,

and to sustain which a cloud of witnesses, under our present system, would be in attendance, will, at the first term, be eliminated from the record, and occasionally a case will be dismissed entirely upon general demurrer, and thus save the attendance of both witnesses and jurors. If, at the same term, the court be required to ascertain the jury cases, and set the call of the jury trial docket for a day certain at the next term, then the parties can appear with such witnesses only as are necessary to sustain the issues remaining in the case, and the only preliminary question to the trial of all cases upon the issues of fact, will be simply that of continuance; no further amendments being permitted, except in proper cases under affidavit, in analogy to the plea of *pais darien* continuance at common law.

M. H. BONNER.

DEPOSITIONS OF ALL WITNESSES IN CIVIL CASES.

[Suggestion Number Three.]

Having now decided the issues of law, and having to this point saved the expense of the attendance of both witnesses and jurors, while delayed in that most important part of the trial, and the expense of the latter in all cases unless demanded, and having set down, for a particular day in the term, the call of the jury trial docket, so that jurors need not attend before that time, we will next inquire what further expense can be saved in the attendance of witnesses. Before doing so, however, it is proper to pay a deserved tribute to that clause in the Constitution of 1876, which provided that no jury should be had in any civil case unless demanded by one of the parties. Under our former laws and practice, the reverse of this was the rule, and a jury was necessary in any contested case, unless expressly waived by both parties, thus requiring jurors to be in attendance throughout the whole term. In the practical operation of the new law in one judicial district, of which I can speak advisedly, and I presume it is the same in others, juries have not been demanded in more than one-third of the trial cases; and in one instance a jury was not

demanding during the entire term. The single item of the five dollar jury fee, which formerly would have been taxed in the bill of costs, in the aggregate will amount to a large sum thus saved to litigants. This growing tendency to dispense with juries, with the reduction of the grand jury to twelve members, has very greatly lessened the expense of this service, and with an appearance term, as before recommended, it is believed that this part of the machinery of the courts, which had grown to be such a burden upon the people, both in taxation and unnecessary attendance, will be carried on at comparatively nominal expense. A much greater saving can be realized by taking the depositions of all witnesses, with perhaps a few exceptions, under proper rules and regulations in civil cases. The most burdensome and expensive part of the whole court, to both litigants and individual members of the community in the great majority of the cases, is occasioned by the attendance of the witnesses. This is particularly so to the witnesses themselves in cases where the parties litigate in *forma pauperis*.

Under existing laws the deposition of witnesses generally, resident within the county, to a single point even, can not be taken unless by consent of both parties. The system by deposition has long been the practice in courts of chancery, and thereby great delay and costs have been avoided, and our procedure is one of mixed law and chancery. Even under our present system the depositions of females, of aged, sick and afflicted persons, and of those who are non-residents of the State or county, can be taken, and have usually proven satisfactory, so far as my experience and observation have extended. As an illustration, if proper and practicable to take the deposition of a witness who resides without the county, why is it not equally proper and practicable to take the deposition of a witness who resides within the county, perhaps near the county line, and within a short distance of his neighbor whose deposition is on file? Beside the very great expense, direct and indirect, which now burdens the country, every court, by the mileage and per diem fees to witnesses, and by the withdrawal of their labor and supervision from their several industrial

avocations, there would be other very marked advantages resulting from the proposed change. Cases would be more speedily brought to trial, and that great reproach to our present judicial procedure, frequent continuance for want of the testimony of absent witnesses, would be removed, as, by the proper use of diligence, their depositions, in most instances, would already be on file; the testimony of the witnesses would be perpetuated in case of death or other casualty or defective memory; and that most vexatious source of annoyance to both court and attorneys, a wrangle over statements of fact, would be obviated.

There is this, and perhaps other objections to the system, that in some instances it would be more satisfactory that the witness should be personally on the stand and subjected to examination in presence of the court and jury. This could be obviated to some extent by requiring the witnesses to attend at some suitable place, — as a general rule at the court-house, — for the purpose of having the deposition taken, and giving to both parties, in person or by attorney, the privilege of being present, and propounding, either in writing or orally, any pertinent questions they may desire. In some cases, on affidavit of the necessity therefor, the personal attendance of the witnesses may be enforced under such rules and regulations as may be deemed proper. The tendency of modern legislation and of the decision of our courts of the very highest authority, is to relax the old rules of evidence. No system which we can devise will be perfect, but it is believed that the advantages of the plan suggested, of taking the depositions of all witnesses generally in civil cases, under proper safeguards, even with the objections to it, will so far outweigh the disadvantages of the old system as to recommend it to the very favorable consideration of the profession.

MORE STRINGENT LAWS AND PRACTICE DEMANDED ON THE SUBJECT OF
CONTINUANCES.

[Suggestion Number Four.]

Having shown how that stage in the progress of the trial in civil cases at which the parties will be called on to an-

nounce themselves ready on the issues of fact or apply for a continuance can be reached at comparatively little, if any, expense of either jurors or witnesses, and having shown that applications for continuances on account of the want of testimony, if due diligence is used to take depositions, will be of rare occurrence, we will next see how delay and expense can be saved in criminal cases.

If, as required in regard to the issues of law at the appearance term for civil cases, the defendants in all criminal cases be required to file at the first court after arrest all exceptions to indictments and motions to quash, or else they shall be deemed waived, and the court be required to act upon them at the same term, or as soon thereafter as the other business will permit, then one very prolific source of delay and expense will be removed. How often has it occurred, within the observation of every experienced judge and attorney of long practice, that, after a case had been called and continued for a number of times, frequently until the offense was barred by limitation, after the expenses of jail fees, attendance of jurors and witnesses had accrued, after all the witnesses had at last been found and were in attendance, many of them possibly from distant counties, and the jury ready to be impaneled, exceptions to the indictment have for the first time been filed, presented and sustained, and the defendant discharged. How easily could all this have been obviated, and the defendant brought to justice, by requiring these to have been presented and decided at the first term.

This devolves upon the defendant, as the State can not force the issues of law until they are first presented by the defendant.

But, admitting the indictment to be good, the facility with which continuances can now be obtained, is a sad commentary upon our laws and practice.

This is attributable, doubtless, in some instances, to the leniency of the judge presiding, but in most cases, as the requirements of the law are complied with, he is compelled to grant the continuance; else, after the delay and expense of a trial, the case will be reversed and remanded. Thus,

frequently important cases are worn out and virtually lost before they are brought to trial. Continuance after continuance is had; witnesses die or remove from the county or State; their interest becomes adverse, or, from natural or mercenary causes, important facts fade from the memory or can not be obtained. This, as said by Mr. Justice Wheeler in another connection, is of so frequent occurrence "as to seem to justify the reproach of the law, that it does not afford any adequate protection for the sacred rights of personal security," and, we might add, of property.

But to the individual loss of the immediate parties litigant should be added the expenses of the witnesses, jurors, jail fees, and, in most cases on the criminal docket, and in many cases on the civil docket, the loss in fees and expenses to the officers of the court.

In all capital cases we are by law required to have special venires of from thirty-six to sixty men. As these are not entitled to pay, except the particular twelve who are finally impaneled, and, as in State cases there is seldom any cost paid to witnesses, and frequently none to the officers of the court, these frequent continuances, with their consequent evils, have become burdens too grievous to be borne. As grievous burdens were imposed in olden times, by the Scribes, who were then called lawyers, but who, I am proud to say, did not represent that respectable and influential class so known in latter times, let it be the important work of those who are now called lawyers to remove them.

Many witnesses attend from day to day and from term to term from respect to the process of the court and the powers that be, while many others disregard and seek to evade this process, and thus cause the necessity of frequent continuances. I call to mind one instance, of an aged, infirm witness, who was under attachment in an important capital case simply because he resided without the county. In obedience to that process, he traveled a distance of two hundred and fifty miles, through the inclement snows of January, 1877, when the case was continued for the testimony of another witness who resided within the county

and but a few miles distant, who failed to attend because he was simply under the process of subpœna. An attachment was ordered for the absent witness, which, under our statute, could not previously issue, because he resided within the county. This compelled his attendance at the next term, when the case was again continued for a witness who was under subpœna only, and thus was the case continued by first one and then the other party.

Again, under the terms of our statute, as construed by the Supreme Court in *Dinkens v. The State*, 42 Texas, 252, a defendant who is committed to jail to answer at the next term of the District Court a grave charge, perhaps without bail, after a full and patient investigation for days before an examining court, although fully aware of the specific charge against him, and the names and residence of all the witnesses, real or feigned, in his behalf, is not required or even permitted to use any diligence to prepare for trial until the bill of indictment has actually been found and returned into open court; and, under the statute, as construed in *Shackelford v. The State*, 43 Texas, 140, the judge presiding has no discretion, over the objections of the defendant, to postpone the trial for a reasonable time, until the attendance of the witnesses can be obtained. The same restrictions and prohibited use of diligence apply also to the State. Hence, instead of encouraging trials and the administration of speedy justice, our present laws and practice virtually forbid it, as a continuance in a State case at the first term is obtained almost as a matter of right.

It is respectfully submitted, that there is, on principle, no good reason why the first application for a continuance, in both State and civil cases, should not contain all the substantial requisites of the second or other subsequent application; that the law should be so amended as to permit and require both parties, where the defendant has been bound over to answer a charge at the succeeding term of the District Court, to issue with due diligence, before indictment found, the necessary process to compel the attendance of witnesses; that witnesses, in all felony cases at least, should, in the first instance, be placed under bond, as

a general rule, with security, to compel their attendance, and, to this end, authority should be given to the committing magistrate to thus force the attendance of all the material State witnesses before the proper grand jury, and of all the material witnesses for the State and defendant, before the District Court for the trial of the case. This would compel the prompt attendance of witnesses, prevent evasion of process by absconding from the State or county and thus enable the courts to enforce trials, and a speedy administration of justice. This would also save the expense of jail fees, of the bailiffs and other officers in summoning these very witnesses, and the delay and expense of the grand jury while awaiting their appearance.

In this connection, and as saving much expense to the counties, it is further suggested that our laws should be so amended as to compel defendants who appeal, many perhaps for delay, to make their cases returnable to the then pending or next approaching term of the Court of Appeals. This is in harmony with one of the main objects of the organization of this important court, and would not only save great expense to the country, but in many cases should be done in justice to the defendants themselves, where the judgments have been affirmed in cases where the punishment assessed was confinement in the penitentiary. In addition to this the law should also be amended so as to permit speedy sentence to be passed after affirmance of judgment.

In a late circuit, in one of the judicial districts of the State, five defendants were awaiting the action of the court, in cases where the judgments had been affirmed for several months, before sentences under existing laws could be finally passed; and, doubtless, there were many similar cases in other districts.

THE IMPORTANCE OF STATUTORY LEGAL FORMS.

[Suggestion Number Five.]

Every intricate science has its formulas; every difficult art its designs. The law, in its theory, is an intricate science; in its practice, a difficult art.

The old masters of the profession have handed down to us the result of their experience and judicial construction in certain forms of pleading, civil and criminal, and other practical forms, which have stood the test of ages.

Many of these, in some of their requisites, have outlived the reasons which gave them existence, and, to this extent, have become obsolete. In many respects, however, they are still valuable. As expressed in the new rules, in regard to pleadings, while these forms are not authoritatively requisite, they may be generally followed as safe guides. Were all our officials good draftsmen, and had they the leisure to prepare the requisite instruments as the particular emergency may arise, there would not exist so great necessity for carefully prepared forms. But even our courts of last resort sometimes differ as to the legal construction of certain instruments prepared by our best lawyers, and it could not be expected but that our officers, frequently unskilled by previous education or experience, should in many instances fail in their experiments.

The want of proper forms has occasioned great delay and loss, and a great resort, in almost numberless appeals, to the proper courts on questions of construction. How many indictments, after the expense of procuring the witnesses before the grand jury, and of the grand jury itself, and the further expense of the attendant jurors and witnesses upon the court, perhaps for several terms, jail and other incidental fees, have finally been quashed for want of a simple, comprehensive, statutory form.

Such legislation works well in other States where tried, and in some few instances in which we have statutory forms the most satisfactory results have followed. Very many lawsuits, doubtless, have been prevented by the prescribed form for taking the separate acknowledgment of a married woman. It is seldom the case that a motion to quash an attachment is based upon a want of formality in the bond. Our statute, which prescribes the form of recognizance in appeals in State cases, has saved much confusion and delay.

Thousands and thousands of dollars are lost annually by

reason of defective bail bonds. These important instruments, so essential in the administration of the criminal law, and which require the skill of one learned in the law, are generally prepared by inexperienced or incompetent officers, who do not know the legal effect of the terms used, or the necessity of others entirely omitted. Even recognizance, judgments *nisi* and final, taken in the very presence of the court, are often, from want of proper care and attention, so defective as to be set aside on motion or appeal. In this way not only is the amount of the penalty lost to the State, after all the expense and delay incurred to that stage in the prosecution, but in many cases the offender escapes wholly unwhipped of justice.

Frequently judgments by default can not be taken, where there is no appearance and contest even by the defendant, for want of a proper return by the officer, who may live in a distant county, and hence can not amend it during the term; or, if taken, they are set aside or reversed on appeal. Depositions are in many cases suppressed for want of proper certificate from the officer, or informality in the manner of return; indeed for depositions to be sustained under our present practice is the exception rather than the general rule. All this obstructs the machinery of the courts, causes frequent appeals to the Supreme and Appellate Courts, and consequent delay and expense which could easily be remedied.

It is most respectfully submitted, that if the suggestions contained in this and the four preceding articles be practically carried into effect, and if the judicial districts be so reduced in size as to insure sufficient time for the full call of all the dockets (the want of which, in many counties amounts to a denial of justice), and so as to give the judges that time for reading and reflection, so essentially necessary to a proper discharge of their high and responsible duties, then, it is most confidently believed that some of the greatest defects in our laws and practice will be remedied, the enormous expenses of our judicial system will be reduced at least one-half and justice will be more speedily and effectually administered.

Before concluding these suggestions, it is proper to state that it was not intended in the first one, "A Proposed Amendment to our Statute of Trespass to Try Title," to require parties to set out their title papers in *hæc verba*, but simply to deraign them according to their legal effect, which can be done in a small space. Neither was it intended to compel a defendant to plead his title, when he simply relied upon his possession and the weakness of the plaintiff's title; but in cases only where he sought to recover on the superiority of his own title.

His sentence of judgment upon N. T. Dickerson, a preacher, shows the blending of sternness and sympathy which entered into the composition of his character. He said:—

"The most painful of my official duties is to pass the sentence of the law upon those who have been convicted. In your case this duty becomes doubly so by reason of your age and former ministerial position. Now past your three score years, once a minister of the gospel, the cardinal doctrine of which is peace on earth and good will toward men, it is indeed a sad commentary upon the frailty of human nature, and from which we may all take warning, that you should be arraigned and sentenced for the crime of murder. The verdict of the jury shows that in an unguarded hour, when reason had lost her sway and passion ruled, you took upon yourself the awful responsibility which belongs to God and the tribunals of justice only, to take the life of a fellow-being, and to send his spirit without previous preparation into the presence of Him who gave it. In justice to those better instincts of the human heart which still remains to man amid the ruins of his fall, and in extenuation of your seeming guilt, we indulge the suggestion that there are mitigating facts in your case, which the unfortunate circumstances by which you were surrounded prevented from being brought to light. Our human tribunals are far from being infallible; we are liable often to err, but before the judgment bar to which we are all fast hastening, when the secrets of all hearts shall be made known, I sincerely trust that either from the true facts of your case, which may not have been fully developed here,

or from a bitter repentance acceptable in the sight of God, the final sentence of condemnation forever may not be passed upon you. Your general good character for peace, testified to on the trial by many of your old neighbors, and the meekness with which you have borne your long and painful confinement in jail, speak much in your favor. These considerations, with your age, will doubtless appeal strongly to the clemency of those into whose custody you are about to be committed. Continued good behavior on your part, may, as is often the case, shorten the term of your confinement. I strongly commend you to the mercy of Almighty God, who graciously promises never to forsake them who put their trust in Him.

“It is, therefore, the sentence and judgment of this court that you be taken hence by the sheriff of Kaufman County, and by him safely conveyed to the penitentiary at Huntsville, there to be confined at hard labor for the term of ten years.”

The following lecture, delivered by Judge Bonner from the bench, upon the admission of an applicant to practice in his court, is worthy of preservation, and is commended to all young lawyers for its elevating sentiment and salutary counsel:—

“Standing upon the threshold of your profession, within the vestibule of the great temple of justice, in which you are now called to officiate, as an introduction to my charge to you upon the true mission, duties and responsibilities of lawyers, I call your attention to the eloquent language of that profound scholar and jurist, Judge Story, at the close of his great work on Equity Jurisprudence. His remarks are applicable to the whole science of law. He says: ‘The grandeur of the entire plan can not be fully comprehended but by the persevering resources of many years. The masterpieces of ancient and modern art still continue to be the study and admiration of all those who aspire to a kindred excellence; and new and beautiful lights are perpetually reflected from them, which have been unseen or unfelt before. Let the youthful jurist, who seeks to en-

lighten his own age, or to instruct posterity, be admonished that it is by the same means, alone, that he can hope to reach the same end. Let it be his encouragement and consolation, that by the same means the same end can be reached. It is but for him to give his days and nights, with a sincere and constant vigor, to the labors of the great masters of his own profession, and, although he may now be but an humble worshiper at the entrance of the porch, he may hereafter entitle himself to a high place in the ministrations at the altars of the sanctuary of justice.'

"In entering upon this, one of the most important and responsible of the learned professions, you will be expected, as an individual, to discharge more prominently your duties as a good citizen and member of society; and as a lawyer to discharge faithfully the new duties which you have assumed to the court, to your clients, and to yourself. The old members of the bar are passing away, and the young members must take their places. Soon to their keeping will be handed down the duties, responsibilities and *esprit de corps* of the profession. They should prepare themselves to discharge well the one, and to guard sacredly the other.

"A passing glance only will be given at the most important of these, presenting the mere outlines alone, leaving the details to be filled up by your future observation and learning, and by intercourse with the honorable and meritorious members of the profession, with whom it will be your good fortune to associate. I can not do this more forcibly than by calling your attention to the Advocate's Oath of Geneva, of which it has been well said: 'Here you have the creed of an upright and honorable lawyer. The clear, terse and lofty language in which it is expressed needs no argument to elucidate its principles, no eloquence to enforce its obligations. It has in it the sacred savor of divine inspiration, and sounds almost like a restored reading from Sinai's original but broken tablets.' The oath is in the following language: 'I solemnly swear, before Almighty God, to be faithful to the Republic and to the

Canton of Geneva; never to depart from the respect due the tribunals and authorities; never to counsel or maintain a cause which does not appear to be just or equitable, unless it be in defense of an accused person; never to employ, knowingly, for the purpose of maintaining the cause confided to me, any means contrary to the truth; and never seek to mislead the judges by any artifice or false statements of facts or law; to abstain from all offensive personality, and to advance no fact contrary to the honor and reputation of the parties, if it be not indispensable to the cause with which I may be charged; not to encourage either the commencement or continuance of a suit from motives of passion or interest; nor to reject, for any consideration personal to myself, the cause of the weak, the stranger, or the oppressed.'

"A brief analysis of this oath is worthy of your most serious consideration. As it required the advocate to be faithful to the Republic and to the Canton of Geneva, you are required to swear that you will support the Constitution of the United States and the State of Texas; that you will honestly demean yourself in the practice of law, and will discharge your duty to your clients to the best of your ability.

"The proper construction and faithful administration of the laws on the part of our rulers, and the respect, veneration and obedience due them on the part of the people, constitute the great sheet-anchor of all good government; but a latitudinous construction to suit the wishes of tyrants, and a blind and ignorant submission to fundamental innovations is the dangerous rock upon which the greatest governments of the world have been wrecked.

"There is, against lawyers, a common but most erroneous prejudice growing out of improper practices of some unworthy members of the profession. It should be your proud aim, both by your example and discourse, to remove this prejudice and to elevate the profession to its proper high standard.

"Lawyers have ever been foremost to advocate the principles of political liberty and reform, and to seal with their

blood their devotion to the cause. From their ranks, oftener than from other stations in life, are selected our politicians and statesmen in the executive and legislative departments of our government, both State and Federal; and the judiciary department must necessarily be filled by them. History will fully sustain the following remarks of Chancellor Bibb in their vindication:—

“ ‘Do not cherish prejudice against lawyers as a class. They have been in all free governments the friends and supporters of liberty, exposing the corruption of ministers and the prostitution of judges. They are necessary to bring the ministers of the law to an account for oppression in office; to warn judges of their duty; to apprise the people of their rights; to defend them against the encroachment of unconstitutional power; to detect the frauds of the knavish and artful upon the honest and simple; they are useful in the general administration of the laws.’

“ ‘Some of the most remarkable and eloquent speeches which have ever been delivered, and which have shaped the destiny of nations, will most strongly prove the above statement. Among many others which it will be your duty and, doubtless, your pleasure to read, I refer you to the celebrated speech of Lord Erskine, ‘On the Rights of Juries,’ in the great case of the Dean of Asaph.

“ ‘Well may we be proud of such a legacy, and right earnestly should we strive to sustain this noble reputation, and add to it our weight and our influence. It is estimated that there are forty thousand lawyers in the United States. There were one hundred and ninety-eight in a recent session of Congress, and many more, doubtless, in the several State Legislatures. In despite of an ignorant prejudice to the contrary, experience proves that legislation can not be carried on without the aid of lawyers; for who can well make or amend that which he does not understand? Lawyers have no richer harvest than that which grows up from ignorant or ill-advised legislation.

“ ‘These thousands of lawyers are scattered in the principal villages, towns and cities of the Union, and from their education, training, habits and station in life, necessarily

exercise a leading and controlling influence over the sentiments of society and the policy and destiny of state. The influence, for weal or woe, of such an array of trained talent and energy, permeating every circle of society, can scarcely be estimated. As one of this great army, in the grand drama of life, guard well your actions and your influence.

“We are required never to depart from the respect due to the tribunals and to the authorities. In that book of books, written by the hand of the great Lawgiver himself, teaching us as man never taught, and whence we draw, as from a never-failing fountain, our great principles of law and equity, we are commanded to obey ‘the powers that be.’ That greatest of the Apostles, who was brought up at the feet of Gamaliel, the learned doctor of the Jewish law, spoke on one occasion unwittingly against one of the judges. When informed of this he declared his ignorance of having thus spoken to a judge, and said: ‘It is written: “ ‘Thou shalt not speak evil of the rulers of thy people.’ ”’

“You have now become a sworn officer of the court, and that which adds to the dignity of the court adds to your dignity; and that which detracts from the dignity of the court detracts from your dignity. The individuality of the judge presiding is merged into his official position, and though you may not respect him as a man, you should have respect for his office. This, besides being your duty, you will find in your practice to be the best policy. If you are always courteous and respectful to the court, it will insure you the attention of a considerate judge, though he may be inclined to differ with you in your construction of the law or facts of the case.

“Another obligation to the court is most forcibly laid down in the advocates’ oath, — that you will never employ, knowingly, for the purpose of maintaining the cause confided to you, any means contrary to truth, and will never seek to mislead the judges by an artifice or false statement of facts or law. As said by Chief Justice Gibson: ‘It is a popular but gross mistake to suppose that a lawyer owes no fidelity to any one except his client, and that the latter is the keeper of his professional conscience. He is es-

pecially bound by his official oath to behave himself in his office of attorney, with all due fidelity to the court as well as to the client, and he violates it when he consciously presses for an unjust judgment, much more so when he presses for the conviction of an innocent man."

"As has been most forcibly said, and which you can well adopt as one of your professional maxims: 'What is morally wrong can not be professionally right.' Truth, that mirror of justice and good faith, that talisman of integrity, should always characterize your conduct as a lawyer. As a man, you should be honorable and high-toned in all your dealings, and as a lawyer, your duty to your client never demands of you that which, as a man, you would scorn to do for yourself. Your client can demand of you to protect his legal rights, but not to sacrifice your moral honesty; to see that he is not unlawfully imposed upon, but not that you impose upon yourself or the court. Remember, then, to keep unsullied your professional reputation, and that your obligations as a lawyer are not intended to supplant your obligations as a gentleman, but rather to add to them.

"As an officer of the court you are expected to assist, not to lead it into error; to hold up and strengthen the hands of the judge in the faithful performance of his high office of trust and confidence, so intimately connected with that personal liberty and right of property in which every citizen is interested. Sadly to be pitied is that judge who thinks that he has arrived at the pinnacle of his profession and has nothing more to learn. If ignorant and dull, and if it be possible for counsel to mislead him by any artifice or false statement of law or facts, then others, less scrupulous than yourself, might exert a more controlling influence over him. If, however, he should be learned in the book of human nature as well as in the books of the law, he would soon detect your false premises and fallacious arguments, and you would soon cease to exert that influence to which you should be entitled.

"You are also required in your intercourse and practice in the court-room to abstain from all offensive personalities,

and to advance no fact contrary to the reputation of the parties, if it be not indispensable to the cause with which you are charged. Zeal in behalf of clients, or desire for success, should never induce counsel to endeavor to obtain a verdict by arguments based upon other than the facts in evidence and the conclusions legitimately deducible from the law applicable to the same. All remarks calculated to excite undue passion or prejudice should be carefully avoided; and verdicts obtained by such unfair means should be promptly set aside.

“You will find, as has been well remarked, that pleasantness and politeness are the cheapest and most remunerative commodities with which a young man ever entered into business. If some inconsiderate member of the bar, opposing you, should resort to the shallow expedient of offensive personality, rather than sound argument, remember that the wise man has taught us that it is not always best to answer another according to his folly; neither is it beneath the dignity of a true gentleman to turn away wrath by a soft answer. It is an excellent practice prevailing in some of our best organized courts, and handed down to us by the fathers of the profession, and well worthy our emulation, that the members of the bar should always, in the business of the court-room, address each other as ‘my brother.’

“As far as possible, then, in your intercourse with your brother attorneys and the officers of the court generally, be on the very best terms; merit their confidence and kindness, and reciprocate their favors and their courtesies. Remember, however, that every pleasure has its snare, and that, sometimes, in the exhilaration of the social greeting and the boon companionship around the circuit, which is peculiar to lawyers above all others of the learned professions, you may, almost insensibly, be led into excesses. How often, alas, have we been called to mourn the untimely fate of our most gifted members. They appeared as flashing meteors, but soon their dazzling brightness was hidden behind the clouds of dissipation.

“There is another error into which unreflecting attorneys

sometimes fall — that of unnecessarily brow-beating and abusing witnesses and parties. You should recollect that many witnesses and parties are *forced* into court by compulsory process, and many good men, from the novelty of their situation, are naturally embarrassed. You should not make their position, and that which is often their misfortune, the occasion of their defamation by substituting *privileged slander* for legitimate argument. In a proper case, however, it is your right, and it may be your duty, to deal with them as you think they deserve, and expose villiany, corruption and perjury.

“Towards your clients the very utmost good faith is required, and you should be true and faithful to their interests. The law is very guarded in this particular, and their privileged communications to you are held so sacred that the courts not only will not compel you to disclose them, but are forbidden to permit you to do so without their express consent; this being both a right belonging to your clients and a duty owing to yourself. You should give them good counsel, learn the facts of the case, and advise them of the law bearing upon the same. Never from motives of interest or passion encourage either the commencement or continuance of a suit, nor reject from any personal consideration the cause of the weak, the stranger or the oppressed; and never counsel or maintain a cause which does not appear to be just or equitable, unless it be in the defense of an accused person.

“Under our laws every one is presumed innocent until proven guilty, and has a right to a fair and impartial trial by the courts of the country. Even the worst criminal in the land is entitled to a legal trial, and to be judged by the proper tribunal, and, though you may be impressed with a belief of his guilt, yet, it is your sworn duty, when in his defense, to see that he is not convicted contrary to the rules of law and the practice of the courts. The law, in its humanity, requires the court to appoint, when parties are too poor to employ, counsel. The profession has much of this ‘charity practice,’ for which the world does not give it credit. When so appointed, it is your

duty to see that the defendant has a fair and impartial legal trial — nothing more, nothing less.

“The property, reputation, and even the life of your client may be confided to your care; and, that you may properly protect them, it is your solemn duty to learn, and if possible, to master the law. Our system of law procedure is peculiar, and our State an empire in its territory and resources, and, if undivided, bids fair soon to rank with the proudest in the Union. It presents extraordinary inducements for active brains and energetic hands, insuring both honorable reputation and comfortable competency. You must, however, be the architect of your own professional edifice. There is indeed here no ‘royal road’ to preferment, no excellence without great labor. You will find that even in the *viginti annorum lucubrationes*, instead of having mastered the whole of the law, you will but have trained yourself for the great work; that new and rich fields of inquiry open their harvest before you, and that new conquests invite you onward. Its boundaries, like space, seem to recede as we advance. A great master of the art, when asked in what does true eloquence consist, answered: ‘Action, action, action!’ One of the greatest sources of a lawyer’s success is reading, *reading*, **READING**! Another of the most prolific sources of instruction, combining both the theory and the practice of the law, is the actual work in the court-room. Whether engaged or not in the particular case on trial, if you can consistently with other engagements, watch it closely and with the determination to learn. Besides the direct instruction, it may open to you a rich vein of thought and investigation. It is said that the great Daniel Webster once gained, with a brief prepared for a justice court, a celebrated case, in which he received a large fee. Watch the learned lawyer, and the eloquent advocate, his ease, his self-possession and his learning; scan closely the pleadings, listen to the artful examination and cross-examination of the witnesses, and to the questions of evidence; note the arrangement and manner of the argument, determining between the terse, pointed logic, and fervid zeal of the true advocate, and the rambling

thoughts and the 'long, hollow harangues' of others. In this way you will learn the *art* of the law, that tact and practice so essential to success, and which no amount of reading can supply. Truly it may be said that ministers of the gospel may be aided by Divine inspiration, empirics in the medical profession may bury their ignorance and their blunders with their unfortunate dead, but the practice of the lawyer stands upon its own merits, exposed to the open gaze of the whole multitude, and a discerning public will not be slow to judge him by the proper standard. It is not expected that every one will make a distinguished advocate or a profound jurist, but all who aspire to become successful lawyers should start out with a reasonable amount of good, native intelligence, and a large share of energy. As between such and the man with fine natural talent, who relies mainly on that for success, you will find that in the end it will be but a renewal of the race between the hare and the tortoise, that energy and perseverance will outspeed the erratic flight of mere brilliant genius. Judge Story says: 'To no human science better than the law can be applied the precepts of sacred wisdom in regard to zeal and constancy in the search for truth. Here the race may not be to the swift, but assuredly the battle will be to the strong.'

"As a young lawyer, and inexperienced, you should neither expect nor receive heavy and important cases at first. But 'despise not the day of small things;' for if you are faithful to the few cases confided to you, and prove yourself worthy and well qualified for their management, you will soon be invited into the higher walks and richer fields of the profession. Having other necessary qualifications, you may rest assured of the truth of the maxim that 'if you keep your office, your office will keep you.' Punctuality and diligence in business will surely have their reward. Sooner or later merit and worth will be in demand. Qualify yourself for business; let it be known that in business hours you will be found at your office, that you will give your clients good, candid advice, and, you may rely upon it, business men will surely find you out.

Though you may by such advice, now and then, loose a fee in the particular case, yet it will be like bread cast upon the waters, by which you will in the future make friends and reputation worth to you many fees. The inspired writer says, ‘a good name is rather to be chosen than great riches.’ Our reputation, as a general rule, is not made in a day, but by slow degrees, insensibly as the dew is distilled from the heavens—here a little, and there a little. It grows with our growth and strengthens with our strength; and one mishap may destroy that which it required years to rear. So demean yourself, then, that business and a good name will follow you. Scorn to resort to what is known by the profession as ‘sharp practice.’ Rise far above the lone pettifogger and the contemptible shyster, who, jackal-like, disturb the peace and quiet of the community by unearthing and stirring up litigation and lending their aid to disgraceful law suits. Such unworthy and dishonorable members have brought reproach upon our noble profession.

“Be then, as a patriotic citizen, faithful to the constitution and laws of your country; as a member of society and of your profession, high-toned and honorable in your deportment and dealings; diligent in your studies and business; always do unto others as you would wish to be done by, and success and honor will crown your efforts.”

STOCKTON P. DONLEY.

The subject of this memoir was born in Howard County, Missouri, on the 27th of May, 1821. He was educated in Kentucky and was admitted to the bar in that State, from which he removed in 1846 to Texas and began the practice of law at Clarksville, but in 1847 established his office at Rusk and became the partner of James M. Anderson. Mr. Donley was a young man of steady and persevering habits. He rose rapidly in his profession and early distinguished himself, particularly as a criminal lawyer. In 1853 he was elected over the most formidable rivalry to the office of district attorney of the Sixth Judicial District, and found in this position a field inviting to his genius and congenial to his habits of mind, and he soon developed traits of character which gained him great popularity as well as the reputation of being the most efficient prosecutor in the State. He possessed a thorough knowledge of the criminal law, and the inquisitive, prompt and resolute manner in which he sought its enforcement caused criminals to flee from his district as from a glance at certain conviction and sure punishment. He was not only skilled in the legal art of fixing crime, but he was familiar with human nature, and an expert in detecting and judging the motives of men and the springs of human action, so that it was almost impossible for the true history and character of any crime to escape his investigation. No web of perfidy was ever so artfully woven that he could not unravel its threads and expose it in its naked depravity, and the celebrated John Randolph, in his palmiest days, never reveled more in the detection of crime or lashed his guilty victims with more success. Yet he possessed a mild and amiable disposition, which but gave additional effect to his powers; and when occasion required

he would chastise his victims with an air of gentility that added smart to the excoriations of his lash, until writhing in the agonies of chagrin and conscious guilt they would, if permitted, have rushed from the court-room, as did the clergy of Virginia on one occasion to escape the piercing shafts of Patrick Henry. The people hailed him as a purifier of society and a blessing to his district.

In 1860 he removed to Tyler, where he permanently located and entered upon an extensive practice; but when the tocsin of civil war sounded in 1861 he cast his lot with the Confederacy and enlisted as a private soldier in Gregg's Regiment. He was soon promoted to a lieutenancy and displayed conspicuous gallantry at the siege of Fort Donelson, where he was captured with his entire command. On being exchanged he was, in consequence of failing health, assigned to post duty, and continued in that service until the close of the war, when, without repine at the loss of all his earthly possessions, he vigorously resumed the practice of his profession at Tyler.

In 1866, at the solicitation of his friends, he permitted himself to be placed before the people as a candidate for a seat upon the Supreme bench, and was elected by the largest number of votes that had ever been cast in the State for that office. He filled this position with fidelity, ability and honor until he was removed as an obstructionist by military power in 1868. He then resumed his practice in copartnership with Gov. O. M. Roberts, and subsequently with John L. Henry, the latter being his partner at the time of his death, which occurred at Kaufman, Texas, on the 17th of February, 1871.

Judge Donley was a lawyer of fine ability, and, as a judge of the Supreme Court, exhibited qualities which belong to the highest judicial character. The same learning, penetration, energy and devotion to duty which distinguished his career at the bar, eminently marked his character upon the bench. Notwithstanding that four years of military life had left a blank in the prime of his professional life, he not only proved himself, though fresh from the distracting scenes of a long war, fully competent for

the position of Supreme judge, but his decisions portray an ability that would honor the ermine of any sanctuary of justice. He was a man of many noble qualities, and as a judge he was upright and conscientious, patient and polite in his audience, and accorded a courteous consideration to all suitors. He was, moreover, of an energetic and enterprising nature, sincere and manly in his bearing, and a general favorite among the members of the bar. He was modest and retiring in his judicial demeanor. He never sought to force his opinions upon others, yet maintained them with a vigor and erudition that often convinced and astonished his associates.

In politics he was devoid of strong prejudices. Though a firm Democrat, he belonged to that conservative school which maintained an abiding faith in the capacity of the American people for self-government.

While he was not an orator, so far as that quality consists of skill in the use of polished phrases and oration of speech, his arguments were always logical and weighty with the pith of sound judgment; and he was always ready to maintain his position with the naked sword of reason.

His domestic life was of an exemplary order. His highest aim was to elevate his family to the highest attainment of virtue and happiness. He was first married in 1854 to Miss Judith M. Evans, of Marshall, and she having died, he was again married in 1867 to Mrs. Emma Slaughter, of Tyler, and this excellent lady still survives him.

Judge Donley was a man of but few faults, and his weakness weighed but little in the scale of his greatness. They were dimmed and obscured by the full blaze of his resplendent virtues, and his life as a lawyer, a judge and a patriot, is worthy of emulation, and deserves a proud niche in the column of Texas eminence.

He was interred at Tyler, and the funeral procession was one of the largest and most imposing ever witnessed at that place, which fitly indicated the love and esteem in which he was held by his people.



Amos Merrill.

AMOS MORRILL.

The distinguished subject of this memoir was born at Salisbury, Mass., on the 25th of August, 1809. His father was a native of the same place, and was a descendent of an old Puritan family which emigrated from England to Massachusetts at an early period of its history, and from which the distinguished men of that name in New England likewise descended.

The educational advantages of young Morrill, though mainly due to his own exertions, were ample and liberal. He was an energetic, aspiring youth, and taught school during the winter months to aid in defraying the expenses of a collegiate course, which he completed with honor and distinction. He was graduated from Bowdoin College, in Maine, in the class of 1834, while the poet, Longfellow, was a professor in that institution; and having no fortune but his education, and no reliance but his own exertions, the qualities of his nature dictated adventure, and he emigrated to Nashville, Tenn.; but finding no situation there and being short of means, he soon afterwards went to Murfreesboro. There he found employment as a teacher and acquired popularity by the new and successful methods of instruction which he adopted. But his aspirations were not yet satisfied, and, having continued in this occupation two years, during which he read law in his leisure moments, he went back to Massachusetts and studied law in the office of Robert Cross, a distinguished lawyer of Amesbury; and having acquired a thorough knowledge of the rudiments of common law he returned to Murfreesboro, obtained his license and began the practice of his profession at that place. But his ambitious and adventurous spirit yet coveted a brighter and a richer field, and in 1838 he removed to

Clarksville, Texas, where he pursued the study and practice of law, and by his untiring industry and indomitable energy soon took his stand at the head of the bar at that place, which, even at that early day, presented no mean array of legal talent. This portion of Texas at that time swarmed with outlaws from the States, and the position of a young lawyer, who necessarily comes in contact with all classes, was one of constant peril and temptation. But young Morrill was equal to every emergency, and it is said that on more than one occasion his presence of mind, firmness and intrepidity saved his life while grappling with the lawlessness which reigned over the country.

He was here victorious also in a more happy respect. He was married at Clarksville in 1843 to Miss M. A. Dickson, who survives him. She is one of the most accomplished ladies the author has met in Texas, and, if the truth was known, was one of the chief agencies of the distinction and success of her husband.

After his marriage he admitted J. J. Dickson, the brother of Mrs. Morrill, to a copartnership in his practice, which continued until 1856, when Mr. Morrill removed to Austin and associated in practice with the late Governor A. J. Hamilton. This firm became celebrated throughout the State, and continued to grow in popularity and success until the outbreak of the civil war. Mr. Morrill was an old line Whig and opposed secession. He was a conscientious and devoted Unionist, and his views, which he maintained with great firmness and candor, having in a measure estranged his old friends who were ardent in their advocacy of extreme measures for the redress of Southern grievances, his position became unpleasant, and in 1862 he left his home in Austin and retired to Mexico, thence he went to New Orleans, and afterward sought his old home in Massachusetts. During the last year of the war he accepted a position in the custom-house at New Orleans, where he anxiously awaited the time when he could return to his home in Texas, and when peace was proclaimed he returned to Austin intrusted with important business interests by the merchants of New York and Boston.

In 1868 he was appointed chief justice of the Supreme Court of Texas, and held that office during the space of two years. In 1872 he was appointed, by President Grant, judge of the United States District Court for the Eastern District of Texas, upon which he settled at Galveston, where he purchased an elegant residence, and devoted his judicial vacations to the study of maritime law and admiralty, and made himself master of that intricate branch of Federal jurisprudence. He presided in the Federal court nearly twelve years, during which many important cases, arising out of the new order of things occasioned by the war, came before him for adjudication, and it was on the reversal of his decision in the case of the *United States v. Legrand*, by the Supreme Court of the United States, that the Civil Rights Act was declared unconstitutional. But he was a fine constitutional lawyer and was highly complimented by Judge Bradley for the almost uniform correctness of his decisions. It is said that on one occasion when Judge Bradley was presiding in the Circuit Court at Galveston he had prepared a decision, but before declaring it, read it to Judge Morrill, who dissented and gave his reasons. Judge Bradley was struck with their force, and upon advisement, yielded to Judge Morrill's views, and rendered his opinion accordingly.

At the close of the spring term of the Federal court at Galveston, in 1883, Judge Morrill, in consequence of a severe attack of neuralgia in his face and eyes, and otherwise failing health, determined to resign his position upon the bench, and communicated his intention to his friends; upon which the following correspondence occurred between him and the leading members of the the Galveston bar: —

Hon. Amos Morrill, Judge of the U. S. District Court for Eastern District of Texas, Galveston —

DEAR SIR: Our attention having recently been called to the report that you are contemplating a withdrawal from the active duties of your position as judge of the United States District Court, we, the undersigned members of the Galveston bar and officers of the United States Circuit and

District Courts in and for the Eastern District of Texas, apprehending that there may be foundation for the rumor, hasten to make known to you our sincere regret that you should have in contemplation a step that will sever the agreeable official relations existing between yourself and us; and to express the hope that you may, on reflection, find it not inconsistent with those considerations which are persuading you to a different course, to continue upon the bench in the official position which you now hold, and which you have, for more than ten years, filled with an earnest fidelity to the duties it imposes.

[Signed]	Your obedient servants,
W. P. BALLINGER,	GEORGE W. DAVIS,
M. F. MOTT,	S. W. JONES,
J. W. TERRY,	GEORGE E. MANN,
JOSEPH FRANKLIN,	WALTER GRESHAM,
L. MUSSINIA,	P. C. BAKER,
JOSEPH H. WILLSON,	C. S. CLEVELAND,
M. E. KLEBURG,	WILLIAM SORLEY,
A. SAMPSON,	W. HANSCOM,
JOHN W. HARRIS,	BRANCH T. MASTERSON,
SCOTT & LEVI,	HENRY SAYLES,
H. R. MANN,	L. E. TREZEVANT,
R. V. DAVIDSON,	B. BOSCATT,
F. D. MINOR,	T. N. WAUL,
JOHN C. WALKER.	

To which Judge Morrill returned the following reply: —

OFFICE OF U. S. DISTRICT JUDGE, }
 GALVESTON, April 5th, 1883. }

*Messrs. S. W. Jones, W. P. Ballinger, George E. Mann,
 M. F. Mott, and others, Members of the Galveston Bar:*

Your communication stating that there is a report that I am seriously contemplating a withdrawal from the active duties of my position as judge of the Eastern District of Texas, has been handed to me by your committee, Messrs. Waul and Jones.

The laws of the United States seem to assume that where

a man has arrived at the age of seventy years, his mental or physical powers, or both, diminish to such a degree that he is disqualified to hold a judicial office, and though there may be prominent exceptions to this assumption, yet as a general rule it is believed to be well founded. And where there is a safe way and a doubtful one, prudence would require the safe way to be taken.

After due consideration, I am inclined to believe that my failing health requires that I should soon resign the position which for the past eleven years has afforded me the greatest pleasure in my official intercourse with the bar at Galveston. Thanking you kindly for your complimentary letter,

I remain sincerely yours,

AMOS MORRILL.

He soon after this sent up his resignation, and repaired to California with the hope of being benefited by the mild and uniform climate of the Pacific Slope, but on his return was detained some time at Denver by an attack of severe illness. In October, while sojourning temporarily at Knoxville, Tennessee, he was informed that his resignation had not been accepted at Washington, and that there would be no November term of the District Court at Galveston unless held by him. He returned there and held the term, which closed his judicial career.

On the adjournment of the court, he retired with somewhat improved health to Austin, where he spent the winter, but with the return of spring began a steady decline, and though possessing his habitual cheerfulness, it was evident to his friends that the number of his days were few. He died on the 5th of March, 1884, in the seventy-fourth year of his age.

Judge Morrill bore throughout his long career the reputation of a man of strong convictions and stern uprightness of purpose. His name is prominently associated with the history of Texas from the time of its annexation to the Union to the day of his death. He grew with its growth, and ripened with its development, and as an old line Whig and strong Unionist, he was bold and outspoken in his

opposition to its secession from the Union. He was familiar with its laws and procedure from their origin throughout all the phases of their expansion, and as a lawyer, was one of the most successful practitioners that the bar of Texas has ever produced. He had studied law both as a science and an art. He had studied its application as well as its doctrine, and knew how to make the best use of his knowledge. His mind was active and vigorous, and readily grasped every suggestion of reason. He delighted to delve in the rugged fields of the profession, and explore the musty alcoves of its garnered wisdom, and he had gathered ample resources of precedent and parity from every feature of legal history.

As chief justice of the Supreme Court of Texas, his decisions and influence greatly aided in moulding its jurisprudence into harmony with the political changes and new attitude which the civil war produced and established between the States and the Federal government. He occupied this position during a period when many novel questions arose pertaining to the innovations claimed to have been effected by the Constitutional amendments and reconstruction acts; and, while he was at all times a staunch supporter of Federal supremacy and the views of his party, his judicial deportment was that of a just and upright judge and a patriot.

But it was as a judge of the Federal court that he won his brightest laurels. It was here that his fearlessness of character, his uncompromising regard for truth and justice, and his extensive knowledge of law, were most strikingly exemplified. Having an important seaport in his district, many important cases involving intricate and varied questions of commercial law and admiralty were brought before him during his long course upon the Federal bench; but the firmness, impartiality, ability and love of justice, which characterized his decisions, caused them to receive always the homage of acquiescence and satisfaction.

Subsidiary to his knowledge and love of justice, he cherished a devotion to the duties of his office and a lofty pride in performing them in the most eminent manner.

Hence, his decisions were rarely reversed, and elicited from Mr. Justice Bradley the compliment that if all the Federal judges were like him there would be no need of his making the circuit to hear appeals.

That Mr. Justice Woods had also a high opinion of Judge Morrill, both as a man and as a judge, is warmly manifested in a letter of condolence addressed to Mrs. Morrill upon the death of her husband. He says: "My long association with him as his colleague in the public service, gave me an opportunity to learn his sterling qualities. I have always found him to be the soul of honor, the friend of justice, and the defender of the right. He had large administrative ability, was capable and courageous, and feared no man. As a friend, I know he was faithful, sincere and true."

Blended with the fine legal mould of his mind and the sterner traits of his character, Judge Morrill possessed a nature tenderly sensitive to the beautiful and the sentimental. He was fond of poetry, romance and music, and delighted in quenching his æsthetic thirst in the Pierian springs and in the fountains of Parnassus. He was remarkably familiar with Shakespeare and Scott, and if almost any line of either of these authors was quoted he could repeat the next. He was also familiar with the Bible, and thought, like the venerable Macklin, who, on entering his son as a student of law at the Temple, enjoined upon him to make the Bible his first book of study. "The Bible, Mr. Macklin, for a lawyer?" asked the learned gownsman. "Yes, sir," replied Macklin, "it is the properest and most scientific book for an honest lawyer, as there he will find the foundation of all law and morality."

In his social and domestic relations, Judge Morrill was kind, genial and affectionate, and he endeavored to make all around him happy. He had the capacity of adapting himself to any company in which he might be thrown, which rendered him popular with all classes and enhanced his professional success. He took great pleasure in the enjoyment of young people, and even in the latter part of

his life often participated in their amusements. He never had any children of his own, but his house was the home of many others, for which he provided with a generous liberality. He assisted in the education of seven, four of whom were dependent entirely upon him for their advantages.

Such a character could not long remain under the ban of the ruling popular sentiment, on account of a mere difference of political views, and long before his death the sacrifices which he had made for the sake of conscientious convictions and honest principles were conceded by his bitterest political foes to be virtues worthy of esteem rather than qualities deserving condemnation. But at his death all political animosity sunk beneath the wellings of veneration, and reflecting only upon his great ability as a judge and his purity as a man,

His friends estranged but yesterday, in sorrowing awe return
To gather up his greatness into history's golden urn.

On the death of Judge Morrill the bar of his district paid his memory the highest tribute of respect. The following resolutions were adopted:—

“In the Circuit and District Courts of the United States in and for the Eastern District of Texas, at Galveston—

[From the minutes of said courts, March term, April 4th, 1884.]

“T. N. Waul, on behalf of the bar of Galveston, this day appeared in open court, and presented the following proceedings and resolutions, which are here entered of record by direction of the court, to wit:—

“At a meeting of the members of the bar, held at the Supreme Court room yesterday, to take such action as might be deemed appropriate to evince their respect for the late Judge Morrill, the following proceedings were had: General T. N. Waul was called to the chair, and Robert G. Street was requested to act as secretary. On motion of Honorable W. P. Ballinger, a committee was appointed to prepare suitable resolutions.

“ ‘The committee presented the following resolutions, which were unanimously adopted : —

“ ‘ *Resolved*, That the members of the bar of the United States Courts at Galveston desire to express their deep sorrow caused by the death of the Honorable Amos Morrill, who had been for more than ten years the judge of this Federal district.

“ ‘ *Resolved*, That the relations between Judge Morrill and the bar at Galveston, during all that period, were marked by urbanity, consideration and kindness on the part of Judge Morrill, inspiring permanent feelings and recollections of regard and esteem on the part of the bar toward him, of which we desire to preserve lasting record.

“ ‘ *Resolved*, That familiar as he was with Texas law and procedure from their commencement, one of the oldest and most successful lawyers remaining in the State, and for many years a judge of our Supreme Court, Judge Morrill brought to the Federal bench the largest experience and a devotion and pride in the duties of the station which he filled to the full measure of his ability, with impartiality, firmness and justice.

“ ‘ *Resolved*, That we shall always cherish the memory of Judge Morrill as a good citizen, friend and neighbor, with whom for many years our relations were most interesting and pleasant.

“ ‘ *Resolved*, That we tender to his widow, Mrs. Morrill, well known to us to be eminently worthy of the profoundest regard, our earnest and warmest sympathy, and that a copy of these resolutions, signed by the president and secretary, be transmitted to her.

“ ‘ *Resolved*, That these proceedings be presented by the president of this meeting to the United States District and Circuit Courts, now in session, with the request that they be placed on the records of the courts.

“ ‘ W. P. BALLINGER,

“ ‘ J. T. BRADY,

“ ‘ S. W. JONES,

“ ‘ *Committee.* ’ ”

THOMAS H. DUVAL.

This great and good man was born in Buckingham County, Virginia, on the 4th of November, 1813, and was a descendant of one of the old Huguenot families which fled from France to Virginia in consequence of the revocation of the Edict of Nantes. His father afterward removed his family to Nelson County, Kentucky, where he became a noted lawyer and politician, and while quite a young man, was one of the representatives of that State in the United States Congress. He subsequently became the famous Governor Duval, of Florida, having been appointed the first Governor of that Territory after its acquisition from Spain.

Thomas received his education in St. Joseph's College at Bardstown, from which he was graduated in 1833. He afterward studied law in the office of Charles A. Wickliff, who was Postmaster-General during President Tyler's administration, and received both from his distinguished father and eminent preceptor the impression of those professional qualities which so highly adorned his own career. In 1835 he removed to Tallahassee, Florida, where he was admitted to the bar and began the practice of his profession; and having served as circuit clerk of Leon County, and *ex-officio* clerk of the Court of Appeals, he was, in 1843, appointed by the President secretary of the Territory of Florida. In 1845 he emigrated to Austin, Texas, where he resided during the remainder of his life. In 1846 he was appointed one of the reporters of the Supreme Court, and in 1851 was elected Secretary of State. In 1855 he was elected judge of the Second Judicial District, and was re-elected in 1856. When the western district of Texas was created in 1857, he was appointed judge of the United

States court for that district, and held this position until the outbreak of the civil war.

Judge Duval, though at that time a Jacksonian Democrat, was bitterly opposed to secession. He bore an intense and unswerving devotion to the Union, and considered the Constitution as a palladium of protection to every interest and every section of the country. He was honest and conscientious in his convictions. Through all the varied spheres of his life not a breath of suspicion or doubt ever assailed the purity of his motives or the integrity of his acts; but in all, he maintained an exalted position in the esteem of his associates, and in the confidence and affections of the people. While, acting in accordance with his views, he absented himself from the State during the existence of a war, the inception of which he abhorred, he was among the first to return in 1865, and immediately devoted his influences and his energies to the amelioration of the condition of his people. The editor of the *Galveston News*, says: "When he arrived at Galveston, just after the breaking up of the Confederate camps in 1865, and when the interior of the State was the theater of anarchy, he asked the writer whether it would be safe for him, a Union man, to proceed to Austin with his family. The answer was, that it would be so unless he had private enemies. He said that he did not think he had one in the world. He returned to his home and was welcomed by his old friends of every shade of opinion."

Judge Duval was a profound lawyer, and his success at the bar was assured by many of the loftiest traits that adorn the profession. He was endowed by nature with an intellect singularly adapted to the discernment of truth, however veiled in the speciousness of reason, or enveloped in the delusions of circumstance; and his mind was embellished by literary attainments of a high order. He early learned that application, promptness and fidelity were the qualities which insure professional success, and with these he brought to the bar an honorable ambition and a zealous purpose which kindled and prompted his genius to the noblest exertion in every sphere in which his professional

services were employed. His industry was indefatigable; and so versatile was his capacity for usefulness, that no sphere of public duty seemed foreign to its adaptation or incompatible with its highest attainment. While he possessed no one dazzling feature of character, he presented that full orb of virtue, ability and usefulness which is rendered effulgent by its uniqueness and uniformity.

As reporter of the Supreme Court, his powers of analysis, his penetration and discriminating judgment are conspicuously exemplified in the correctness of his interpretation and in the clear and concise method of his compendiums and *syllabi*; and as Secretary of State, his official conduct was marked by the highest order of competency, by an ardent devotion to duty, and by an efficiency which promoted the public interest and adorned the administration of which he was a component.

His energy and integrity, his knowledge of law, and his sound views of justice and equity made him an excellent judge; and his long judicial career was characterized by an uprightness, impartiality and love of justice which established a striking similarity and invites a just comparison between him and Sir Mathew Hale. His decisions are models of plain and precise enunciation, and of perspicuous reasoning. He was firm in his convictions, yet tolerant of the opinions of others, and never obtruded or urged the reception of his views as a condition of his courtesy and regard.

He was a man of exemplary rectitude in all the relations of life—a fond husband, an affectionate father, a warm friend, and a great favorite with the members of the bar. Like most great lawyers, and particularly great judges, he took especial interest in young men who began the practice of law before him, and afforded them every opportunity and advantage which a firm judicial impartiality would permit.

He was married in 1839 to Miss Laura P. Duval, daughter of Captain Duval, of the United States army, a lady esteemed as one of the truest and noblest of her sex, and who no doubt wove the brightest threads in the woof of his

life. They reared an interesting and accomplished family, and one of their daughters, who married Judge C. S. West, now of the Supreme Court, was a lady of decided poetical genius.

Judge Duval had two brothers who were in Fannin's command when it was captured at Goliad in 1836. One of them was among the victims of that massacre. The other made his escape by feigning death while the other prisoners were being shot, and, after many dangers and hardships, rejoined the Texan army, and had an opportunity of avenging the death of his brother.

In the fall of 1880 Judge Duval, now full of years and in feeble health, in company with his aged wife, visited his daughter, who had married Captain C. S. Roberts, of the United States army, and was residing at Fort Omaha, Nebraska. Here he was stricken with his last illness, and died on the 10th of October, 1880. His remains were brought to Austin for burial, where they rest by the side of many who shared the ambitions, the aspirations and the achievements of his long and useful life.

His remains were received and accompanied to their last resting place by a committee of distinguished gentlemen in pursuance of the following resolutions adopted at a meeting of the Austin bar, convened to do honor to his memory :

“Resolved, That in the public and professional life, the labors and honors of Judge Duval, all those qualities of head and heart are found, which make up the good citizen, the honorable and conscientious lawyer and the able upright and exalted judge. In all the positions which he held his kindness to his associates, his justice to all, his purity and goodness of heart, his unflinching fidelity to the right, even in times of fiercest political contests, and the contribution of his best powers to the discharge of every duty, secured for him the permanent esteem and affection of his fellow-citizens. If not brilliantly great, he was nevertheless great ; for to say of one who sat nearly a quarter of a century upon the bench, as can be said of him, that he was fully adequate in ability and learning to every judicial task ; that he was always calm, patient and laborious, never an-

nouncing his conclusions until thoroughly comprehending all the points of the case; that he was impartial and unvarying in his courtesy, sustaining the most fraternal relations to the officers of his court and bar, commanding no less their esteem than their love, it is to pay a tribute which belongs alone to true greatness.

“*Resolved*, That the members of the bar and officers of the court attend the funeral of the distinguished deceased in a body, and that the chairman of this meeting appoint a committee of twelve members of the bar to meet his remains on their arrival in this city.”

The distinguished gentlemen who bore his pall to the grave and with solemn reverence tossed the cold clods upon his coffin consummated the last act which the honors of the world could perform for the mortal parts of a great and good man; but turning away from these mournful obsequies we find him still living in the good he accomplished, in the affections of his people, and in the records of his country.

M. D. ECTOR.

Pericles, in his famous funeral oration, pronounced in honor of those who fell in the Samian war, endeavored in an elegant manner to impress the patriotism of the dead as an example of glory upon the living; that their deaths were a joint and hallowed offering upon the altars of their country; and that, while collectively they gave to it their lives, individually they received that renown which never grows old, and the most distinguished tomb they could have—the urn of glory which they left behind them, the subject of everlasting record; that for illustrious men the whole earth is the sepulchre, and not only do the inscriptions upon columns erected in their own country preserve their memories, but in all lands there dwells for them an unwritten memorial of the heart, more durable than any material monument.

There is not an instance in the history of this world in which any class of individuals exhibited a loftier patriotism, a more glowing public pride or a more splendid gallantry than that displayed during the civil war by the members of the bar throughout the South. No sooner had the first cloud-caps of the coming struggle heaved in view, than their briefs were left unargued, their books were laid away, their offices were closed, and with drawn swords they were found in every town, in every village and in every hamlet, marshalling their countrymen in the array of battle, organizing companies and regiments, encouraging the brave and shaming the timid, leading the advancing files, swelling the ranks or heading the hurrying columns of the Confederacy. Everywhere and in all positions, they met the issue with a determination and devotion that challenged comparison in the annals of patriotism.

Many of them had exhausted their pens through the press and their powers of speech upon the bustings and in the halls of legislation, in argument of the great questions which were now certified by the voice of honor and of patriotism to the arbitrament of war. Before this tribunal they were prepared to vindicate and seal with their blood the scroll of principles which they advocated, and they at once sunk the lawyer in the patriot, the patriot in the soldier, and the soldier in the martyr to what they conceived to be their sacred rights and the honor of their country. Among these there were few more prominent and distinguished than the gentleman who forms the subject of this memoir. He promptly accepted the issue of battle, and his sword flashed in the thickest of the fight.

Mathew Duncan Ector was born in Putnam County, Georgia, on the 28th day of February, 1822, and was of Scotch-Irish parentage. He was educated chiefly at LaGrange, Georgia, and at Centre College, in Kentucky. Having carefully and assiduously prepared himself for the bar, he began the practice of law in his native State in 1844, and in 1846 was a member of the Georgia Legislature. He afterwards spent some time in California, and, having returned to Georgia, he emigrated to Texas in 1849 and settled at Henderson, where he entered upon a vigorous and successful practice, and obtained an enviable distinction at the bar.

As a lawyer he was habitually calm, patient and practical, and he made the dictates of duty the rule of his conduct. He was unswerving in his integrity and devotion to principle, conscientiously faithful to the interests of his clients, and engaged all the powers of his mind and all the energies of his nature in the elimination of truth and the vindication of justice.

Chivalrous and magnanimous in his disposition, he abhorred the methods of artifice, and spurned a cause which he believed unjust. These well known features of his character engaged universal confidence in him as a lawyer and the highest respect for him as a man. He served in the Texas Legislature in 1855, and was a prominent member of that body. In 1861 he enlisted as a private in one

of the first companies raised in Texas for the Confederate service, and was soon afterwards appointed adjutant to General Hogg. He was made a colonel for gallantry in the field, and two weeks later was commissioned brigadier-general for the same reason. He served with distinction at Chickamauga and Murfreesboro' and other battles of the Georgia campaign, and received a wound near Atlanta on the 28th of July, 1864, which caused the amputation of his left leg. Having recovered sufficiently from the shock, he again reported for duty, and was assigned to the command of troops at Mobile about the time that the news of the surrender of General Lee reached the Southern Department. With a sad but dauntless heart he returned to his home in Texas and resumed his profession; but his efficient services were soon called to another sphere of public duty, and in 1866 he was elected judge of the Sixth Judicial District. He held this office one year, and was then deposed by the Federal general, Reynolds, as being one of the Southern *obstructionists*. In 1867 he removed to Marshall, and resumed the practice of law in copartnership with Col. N. H. Wilson, and the firm enjoyed a distinguished reputation. In 1874 Judge Ector was appointed by Governor Coke judge of his old district, which had now become the Seventh District, in consequence of the reorganization of the judicial districts of the State.

When the Court of Appeals was erected by the Constitution of 1875, he was elected one of the judges of that tribunal, and upon its organization in 1876 was chosen by his colleagues its presiding judge, and held that position at the time of his death, which occurred at Tyler during the session of the court, on the 29th of October, 1879.

Judge Ector brought to the bench of Appeals the varied experience of a long and successful criminal practice, which eminently qualified him for the position. As chief judge of this court of last resort, upon which hung the issues of life and liberty to the unfortunate victims of misfortune, of vice or passion, he admirably blended the firmness and candor of judicial dignity and official duty with the dictates of compassion and mercy. He never lost sight or sensitive-

ness of the responsibility of his position, and announced no opinion until he was assured that it was fully justified by the facts and demanded by the law, and these he made the scrupulous measure of his judgments. He was therefore just and correct in his decisions, and his career upon the bench was highly instructive as well as exemplary. His desire was to elevate the new court at once to the highest plain of appellate dignity, wisdom and efficiency, and his decisions add much to the criminal jurisprudence of the State.

The life of Judge Ector was not exempt from the sorrows which beset the paths of men. Death often invaded the altar of his affection, and tore away the companion of his bosom. He was married three times. He was first married in 1842 to Miss Louisa Phillips, of Georgia, who died in 1848, and in 1851 he was again married, to Miss Letitia M. Graham. She died in 1859, and in 1864 he was married the third time, to Miss Sallie P. Chew, of Mississippi, a lady endowed with many charming virtues, and who cherishes his memory with the devotion which characterizes the noblest of women.

In social life Judge Ector was a model of courtesy, gentleness and amiability. He was constant in his friendship and delighted in acts of civility and kindness. One of his associates upon the bench, Judge John P. White, says of him: "In his character were mixed and blended all those genial traits and pure elements which go to make up that highest perfection of humanity, God's noblest work — an honest man."

He was held equally as high in the esteem of the judges of the other high courts and in the affections of the people. His remains were borne to their burial at Marshall by the judges of the Court of Appeals, the justices of the Supreme Court, the Commissioners of Appeals, and the members and attendants of the bar of Tyler; and were thus laid away with all the honors which his associates and professional brethren could bestow upon them. *Ibi quiescant in pace.*

C. M. WINKLER.

Clinton McKamy Winkler, a judge of the Texas Court of Appeals, was born in Burke County, North Carolina, on the 19th day of October, 1821, but was reared in part in the State of Indiana, whither his father, who was a planter, removed his family in 1835. Young Winkler, having received such education in the common schools of the country as the duties of the farm would permit, and from his mother, who was an educated lady, emigrated in 1840 to the Republic of Texas, and settled at Franklin, at that time the county seat of Robertson County, where he engaged employment in the office of the county clerk, and devoted his leisure hours to the study of law. In 1843 he was appointed deputy clerk of the district court, and continued at the same time his preparation for the bar, to which he was soon afterwards admitted. In 1844 he was elected to the same office, from which he retired in 1846, and entered vigorously upon the practice of his profession. In 1848 he removed to Corsicana, where he permanently located, and soon acquired distinction in his profession and a high place in the esteem and confidence of his fellow-citizens. He was, during the same year, elected a member of the Second Legislature, convened after the annexation of the Republic to the Union.

With the exception of one term in the Legislature, Mr. Winkler pursued his profession without intermission until 1861, when he promptly responded to the gage of battle offered to his section, and took up arms in behalf of the South, to the cause of which he was ardently devoted. He was not altogether a stranger to the dangers and hardships of war. Having settled on the frontier of Texas at a time when it needed protection from the invasion of the ruthless

savage, he was early inured to the life of a ranger, and had learned something of the art of warfare in defending the firesides and cornfields of the border settlers, among whom he dwelt.

Upon the election of Mr. Lincoln to the Presidency, by a faction which proclaimed an "irrepressible conflict" with the institutions of the South and the Constitution of the Union, he saw no hopes for his country but in secession, and then in war, bitter, fierce and successful; and early in 1861 he was elected captain of an infantry company, which formed a part of Hood's famous regiment, the Fourth Texas, to the command of which he attained in the latter part of the struggle. He was a brave soldier and an excellent officer. He was greatly admired and beloved by his men, and they would have followed him into the mouths of the guns of Balaklava. His services were conspicuous in all the great battles of Virginia, and ended with the surrender of General Lee at Appomattox. He was severely wounded at the battle of Gettysburg, where his regiment was engaged in the death-struggle for the possession of Round Top, and many instances of his gallantry are related.

At the expiration of the war, Colonel Winkler returned to Corsicana and resumed the practice of his profession. In 1866 he was prematurely declared to be elected judge of the Thirteenth Judicial District, and being properly qualified, entered upon the discharge of the duties of that office; but having subsequently ascertained that his competitor was really elected, he immediately surrendered the office and returned to the bar, and devoted his energies exclusively to his practice until he was elected in 1873 a member of the Thirteenth Legislature, in which he was conspicuous for the fidelity with which he represented the interests of his constituents and for the zeal with which he endeavored to promote the general welfare of the State.

In 1876 he was elected by the people one of the judges of the Court of Appeals, and held this office at the time of his death, which occurred after a brief illness while engaged in his judicial labors, at Austin, on the 13th of May, 1882.

While Judge Winkler was by no means a man of brilliant genius, yet, if the soul and feeling which eloquently spoke in all his acts; if an intellectual capacity for the most useful and honorable attainment in every sphere of life, are elements of genius, he participated largely in that subtle quality. While he may not have had that coruscating brilliancy of imagination which Shakespeare characterizes as a "fine frenzy," he possessed a clear and accurate perception, a sound and penetrating judgment, and an indefatigable power of application. Hence, his knowledge of law was thorough and always at his command.

As a lawyer, he was alert, patient and painstaking, and was sedulous in the preparation of his cases. These qualities bore him steadily upward in his profession, and, combined with a firm and unbending integrity, a vigorous common sense, and a sagacity which embraced alike the grandest outlines and the minutest details, eminently qualified him for the position he occupied upon the bench.

As a judge of the Court of Appeals, he was conscientious and upright, and bent his untiring energies to the adjustment of every case, by the strict rule of law, and the even scale of justice. He was thoroughly familiar with the Criminal Code of Texas, and his long experience at the bar had rendered him expert in the methods of criminal procedure. He was master of the science of criminal pleading, skillful in determining the character and force of technicalities, and his decisions are characterized by an unvarnished chain of logic, a just interpretation of fact, a firm application of law, and a thorough vindication of justice.

As a man, the character of Judge Winkler was symmetrical and elevated. His ruling attributes were candor, truth and charity, and while he was modest in his personal exactions he was exceedingly tender and considerate in regard to the feelings and rights of others. He was faithful to his friends, and his domestic virtues were exalted by the most devoted sentiments of love and affection. He was first married in 1848 to Miss Louisa Smith, of Navarro County, an excellent lady, who died in 1861. In January, 1864, he

was married at Richmond, Va., to Miss Angie V. Smith, a lady of rare accomplishments who still survives him, and who by her culture and literary attainments has woven from the sable weeds of widowhood the bright robes of prosperity and distinction. She is the founder and the editress of that sparkling publication, the *Corsicana Prairie Flower*.

Judge Winkler was held in the highest esteem by his brethren of the bench, and the members of the bar. His uniform courtesy and kindness endeared him to all who associated with him or practiced in his court, and his remains were attended to their burial at Corsicana by the judges of the high courts and a concourse of admiring friends. He was a sincere believer in the promises of Scripture, and died in the firm faith of Christianity. His name is luminously inscribed in the military and judicial annals of Texas. *Ibi emicat in æternum.*

BENJAMIN C. FRANKLIN.

The subject of this memoir was born in the State of Georgia, on the 25th of April, 1805, and was educated at Franklin College, at Athens. Having graduated from this institution he studied law, was admitted to the bar and began the practice of his profession at Macon, Georgia, in copartnership with ex-Governor Charles J. McDonald, of that State.

In 1835 his sympathies were enlisted in behalf of the Texans in their struggle for independence, and he determined to identify his prospects with their efforts. In April of that year he landed at Valasco, at the mouth of the Brazos River, and soon afterward joined an expedition against the Indians, who, instigated by the Mexicans, were devastating the border settlements. He was at the first revolutionary consultation at Columbia, and when the Texan army was organized near Gonzales for the purpose of resisting the Mexican invasion under General Santa Anna, he took an active and energetic part in raising a company, of which Robert J. Colder was elected captain, and which formed a part of Colonel Burleson's regiment. Early in April, 1836, he was commissioned a captain by President Burnett and detailed to organize a company of scouts; but was prevented from complying with his instructions by the advance of the Mexicans, which precipitated the battle of San Jacinto, in which he fought in the ranks under his former captain, using his Mississippi rifle with, no doubt, the same deliberation and earnestness which characterized his actions through life.

Soon after the battle of San Jacinto he was appointed judge of the District of Brazos, afterward the Second District of the Republic, and was thus one of the first judicial functionaries of the new government. He served upon the bench for the space of three years, during which he paid a

short visit to his old home in Georgia, and was married there on the 31st of October to Miss Eliza C. Brantley, a daughter of Rev. Wm. S. Brantley, of South Carolina, who was a noble and accomplished lady, who accompanied him in his return to Texas, and cheerfully and devotedly shared with him the dangers, hardships and deprivations necessarily incident to life in the new and struggling Republic until her death, which occurred in 1843.

In 1840 he retired from the bench and established his residence in Galveston, where he actively engaged in an extensive practice which embraced the whole of South-eastern Texas, directing his attention largely to the location of lands and to the important litigation which necessarily grew out of the intricate land system of the country. In conjunction with J. C. Watrous he represented Edward Hall in his contest with Dr. Levi Jones in regard to the location of land scrip upon Galveston Island. This contest resulted in a compromise by which that part of the island west of the city league was divided into fourteen sections, each containing about twelve hundred and eighty acres — the odd numbered sections, from one to eleven, being allotted to Hall, and the even numbered sections, from two to fourteen, to Jones.

The government of the Republic had, at an early day, caused the entire island to be laid out in lots of ten acres, and provided for the sale of them for the purpose of raising money to relieve the necessitous condition of the public finances; but, after having sold a number of these lots at what was considered an inadequate price, it abandoned the policy of disposing of them in this manner, and with the exception of the lots thus sold, the titles to the entire island, west of the city league, have their origin in the Hall-Jones compromise.

Judge Franklin was also one of the counsel employed by the city of Galveston in its litigation with the wharf company and others, which involved the title to the flats, or shallow water extending along the bay or harbor fronts of the city, and which also resulted in a compromise, by which a third interest in them was vested in the city, with a provision against alienation without the consent of four-

fifths of its qualified voters. He represented Galveston County four terms in the Legislature, and was chairman of the judiciary committee during the whole of his legislative career. This position enabled him to exercise great influence in originating and shaping the laws of the State; and many of those which were enacted during that period bear the impression of his judgment and genius. The scope and intensity of his patriotism, his penetrating perception, sound judgment, and untiring industry rendered him an efficient legislator, and his energies were devoted to the promotion of every interest of the State. Immersed in the requirements of his long public services and the demands of an extensive practice, he yet found time for general culture, and was a man of varied accomplishments and a fine scholar. His æsthetic taste led him to admire the beauties of literature, and impressed his address with chastity and critical correctness.

Although he was a true Southerner he took no active part in the war between the States, being too old for military service, and a great sufferer from rheumatism during the entire period of the struggle. He had retired to a small farm near Livingston, in Polk County, and while he continued to practice law when urged by his old clients, he made no effort to re-establish his extensive practice. His sufferings from rheumatism, aggravated by a malarial attack, his losses by the war, and above all his despondency in regard to the political and social future of his country left but little incentive to begin the struggle of life anew. He led a retired life upon his farm until 1870, when he returned to Galveston, and seeing some chance to aid his countrymen in their efforts to throw off the distasteful rule which had been fastened upon them during the military occupation of the State, he once more embarked in active life, and took part in the first decisive movement on the part of the people to regain the control of the State. This was the organization of the tax-payers of Galveston to resist by all lawful means the levies made to sustain a standing army of militia, and a cumbrous and irresponsible school system designed by means of a host of officials to perpetuate the rule of the Republican party

in the State, which was utterly repugnant to a large majority of the people. This movement was followed throughout Texas, and he lived to see the clouds that lowered in the political heavens of his State pass away behind the horizon, and its people once more on the highway to that prosperity which destiny and nature had shaped for them. He died unexpectedly on the 25th of December, 1873, soon after he had been elected to represent the Galveston District in the State Senate, and in the midst of his plans to devote the riper years of his life to the service of his country.

Judge Franklin was a lawyer of fine ability, and thoroughly acquainted with the history and character of Texas jurisprudence. He had watched and weighed every feature that entered into its composition, and there was no one more familiar with the poised effects and combined import of its blended elements. He was never at a loss for the proper methods for reaching the true issue in a controversy, and rarely erred in the selection of his legal standpoints. He was, therefore, a safe counselor, and possessed the highest respect of the bench and bar, and the implicit confidence of the people.

Although he was stern in the maintenance of that which he believed to be right, and in the pursuit of the dictates of duty, his moderation was no less marked than his integrity. While he was a man of earnest and intense convictions, his actions and expressions were always tempered with mildness and discretion. Hence he was respected and esteemed by men of all classes and politics.

The Constitution of 1869 provided that, within five years from the time of its adoption, the laws, both civil and criminal, should be revised and published in such manner as the Legislature might direct. A bill to meet this requirement of the organic law was introduced in the Legislature in 1872, but for some reason or other failed of enactment. To properly revise and digest the laws of a State is a task requiring the highest legal and legislative skill, and in the bill which was introduced for that purpose, the name of Judge Franklin stood, by common acceptance, at the head of the list of the proposed revisors, thus testifying to the

general appreciation of his ability and eminent qualification for the performance of the responsible and arduous duty.

Nor was this estimate of his character confined to his friends or to the Democratic party. The Republican Governor, E. J. Davis, undertook by virtue of his own authority to repair the omission of the Legislature, and proceeded to appoint a commission to revise the laws of the State. This commission he tendered to Judge Franklin, as one whose appointment he knew would be approved by the impartial and enlightened judgment of all good men of both parties in the State, and in the commission he declared, that "reposing special trust and full confidence in the loyalty, integrity and ability of Benjamin C. Franklin," he did "by virtue of the authority vested in him by the Constitution and laws of the State, constitute and appoint the said Benjamin C. Franklin, commissioner, to revise, digest and arrange the laws of the State, as required by section 35, of article 411, of the Constitution."

Judge Franklin did not believe that the Governor had the power to make the appointment, and promptly declined it; he was not capable of thus violating the law, or of acting under such doubtful authority. But the tribute to his merits, which the selection imports, is no less conclusive of the just estimation in which he was held by all parties.

Judge Franklin was a man of refined social qualities. He was tender in his sympathies, warm in his attachments, and possessed a charity responsive to every appeal of virtue. He was a man of most equable temperament, quiet and methodical in all the affairs of life, and pursued the even tenor of a philosopher. In his views and sentiments he exemplified the best type of early Texas character. He cherished in the highest degree the honor of the State, and was devoted to its institutions and its people.

He was married on the 3d of November, 1847, to Miss Estelle B. Maxwell, of Kaskaskia, Illinois, who was at that time visiting the family of her cousin, Michael B. Menard, Esq., of Galveston. This excellent lady still survives him, and is now residing in her native town, Kaskaskia.

RICHARDSON A. SCURRY.

This eminent member of the early bar and bench of Texas was a native of Gallatin, Sumner County, Tennessee. His father, Thomas Scurry, was of Scotch descent and a lawyer of Gallatin, and is said to have been a man of brilliant intellect, of remarkable memory, fine judgment and sparkling wit and humor, which, descending to his son, William R. Scurry, a brother of Richard, made him the brilliant and engaging "stump speaker" and humorous character, well remembered by the older citizens of Texas.

The mother of Richardson A. Scurry descended from a French Huguenot family which fled from France in consequence of the revocation of the Edict of Nantes, first to England and thence to America, and settled in Virginia. Her parents soon after their marriage immigrated to the unexplored regions beyond the Alleghanies, and she was born in a rude fort erected for the protection of the settlers against the Indians. She was a woman of noble character and intelligence, one fit to be "the mother of sons," and was married in 1808.

Richardson was the eldest of five children. He inherited the fine memory of his father and the reflective, philosophical mind of his mother. His educational advantages were good, and while at school he developed one of those rare order of minds in which the truths of mathematics seem intuitive. He is said to have mastered the first six books of Euclid in three weeks. Having completed a thorough collegiate course, he studied law in the office of his kinsman—the brilliant and eccentric Judge Guild. He possessed a great love for books and a thirst for knowledge, which caused him to extend at the same time his researches

to the various fields of literature, and he acquired a useful store of general knowledge.

Soon after he had been admitted to the bar and had begun the practice of his profession at Gallatin, the struggle of Texas for her independence attracted the attention of the country, and kindled a spirit of sympathy throughout the Southern States. Fired by this sentiment and a love of romance and adventure, young Scurry determined to cast his lot with the heroic people of the young Republic, and joined a gallant band of young men organized for the Texas service. He reached the Texan army two days before the battle of San Jacinto, and was made a lieutenant on the field for gallantry and good conduct.

When the government of the young Republic was fairly organized he settled in San Augustine and formed a law copartnership with General Thomas H. Rusk and Colonel J. Pinckney Henderson. He soon afterward joined a company under General Rusk, organized for the protection of the colony against the depredations of the Cherokee Indians. This gallant little company, after many adventures and narrow escapes, succeeded in driving the Indians out of Eastern Texas and thus terminating "the Cherokee war."

He was the first district judge elected in the eastern portion of the Republic, and this position made him *ex-officio* one of the judges of the Supreme Court. At that time it was necessary that a Texas judge should be not only a clear-headed lawyer and a man of sound judgment, but that he should have the courage to form and deliver his opinions regardless of danger or threats, and sometimes to pronounce judgment with a brace of pistols lying conspicuously upon his desk. But Judge Scurry was equal in all these respects to the demands of his position, and his judgments were enforced and respected.

In 1841 he was elected to a seat in the Congress of the Republic, then held in the town of Washington, and in 1844 he was re-elected and was made Speaker of the House of Representatives.

During this year he met in Washington Miss Evantha Foster, who was visiting her cousin, Mrs. Wm. A. Wharton, whose husband and his brother, Colonel John A. Wharton, were also members of Congress — the former being a member of the House of Representatives, and the latter of the Senate. Miss Foster was a “beauty” among the belles of the gay little capital, who danced their balls on puncheon floors with the gallant young Congressmen and officials arrayed in much-worn garments and decorated with pistols and top-boots. Judge Scurry and Miss Foster were married in 1845.

Soon after the annexation of Texas to the United States he removed to Clarksville, in Red River County, and was elected district judge. In 1853 he was elected with Volney E. Howard, of San Antonio, as his colleague, to represent Texas in the Congress of the United States, and it was in vacation during his last term in Congress that an accident occurred to him which finally terminated his life. In the hurried preparation for a hunt in the early morning, he let his gun fall, which, emptying itself, tore away the lower part of his foot. A country doctor, wholly without knowledge of surgery, amputated it, leaving a wound that never healed, and from this time to his death he was a confirmed invalid. Having to abandon the practice of his profession, he devoted himself to his books. The banking question, which was at that time in a state of much confusion and perplexity, interested him greatly, and he wrote several able articles on the subject which were copied throughout the country.

Judge Scurry was opposed to secession, but believed that a war between the States was inevitable. He was a devoted Texan and an ardent Southerner, and when the bugle blast rang out calling the South to arms he felt more keenly than ever the helplessness which forbade his response to the call. A colonel's commission was sent him by the Confederate government, with orders to raise a regiment; but in his state of health, and being compelled to walk with crutches, this was impossible. He addressed a letter to his old friend, General Albert Sidney Johnston,

stating his condition, and asking him if there was anything a cripple could do in the defense of his country. General Johnston requested him to repair to his headquarters at once, and offered him the position of Adjutant-General on his staff. A physician and friend persuaded him to have his leg amputated, assuring him that he would then soon recover his health; and in his impatience to join General Johnston, he would not wait for chloroform to be procured, which was then scarce and difficult to be obtained, but caused the amputation to be made at once, which he bore with the fortitude of a martyr. His vital powers gave way under the tremendous strain of the operation, and he died on the 3d of April, 1862.

His death was greatly lamented throughout the State, and the most impressive tokens of respect were payed to his memory which those exciting times permitted. General Houston, on bearing of his death, said: "There died one of the most wonderful minds I have ever known. It was a vast store-house of legal lore." He was truly an able lawyer and an excellent judge, and his career was elevating to the bench and bar of the Republic and State. His perceptions were clear, his judgment was based upon sound reason, and his memory was remarkable. It is said that while practicing in copartnership with General Rusk and Colonel Henderson, whenever a difficult question arose, requiring reference to numerous authorities, they would entrust the matter to his memory, and he would without hesitation cite the authors, volumes and chapters desired.

In society Judge Scurry was quiet and sedate, taking but little part in the ordinary surface play of conversation; but when a proper subject for discussion was touched, his extensive knowledge and command of language impressed his listeners with the correctness of his judgment and the wisdom of his views. He held the wand of suasion with a masterly hand, and charmed his hearers with copious and interesting illustrations drawn from his extensive reading.

In the dawn of her history Texas had many bright minds and patriotic spirits, which gave strength to her councils,

valor to her arms, wisdom to her laws, and grace to her character; but there are but few to whom in these respects she owes more than to the two Scurrys. Their names, with those of the two Jacks, the two Whartons and others, will always reflect much of the brightness and glory of the Republic and State along the path of history, throughout the corridors of after time.

WILLIAM S. TODD.

The subject of this sketch was born in Caroline County, Virginia, in the year of 1808. His father, George T. Todd, was the son of a Scotch physician, who, with several brothers, emigrated to Virginia soon after the Revolutionary struggle, one of whom was the ancestor of Mrs. Abraham Lincoln. He was the wealthiest man in Caroline County, and lived to the extreme age of ninety years. William S. Todd was a young man of talent and ambition, and while young represented his county in the Legislature of Virginia. He removed to Texas in 1843, and located at Boston, in Bowie County, but soon afterward removed to Clarksville. In 1850 he was elected judge of the Eighth District, and organized the first courts held in the counties of Cooke, Hunt, Collin and Grayson. He held the position of district judge until 1862, when he retired from the bench and settled at Jefferson, where he died in 1864.

Judge Todd was a member of the convention of 1861, and signed the ordinance of secession. His whole heart was enlisted in the Southern cause, and it is well, perhaps, that he did not live to witness the destruction of his hopes and the overthrow of the principles which he had so long cherished and so ably advocated.

Before he left Virginia he was married to Miss Eliza A. Hudgins. She was the daughter of Thomas D. Hudgins, a planter of Mathews County, who died in Richmond in 1862. She was a highly educated and accomplished lady, and was long an interesting contributor to the *Northern Standard*, at that time the leading paper in Northern Texas. She was a noted teacher, and conducted a flourishing school first at Boston and then at Clarksville, to the time of her death.

Judge Todd was a thorough lawyer and an excellent man. He had applied himself to the study of law with all the vigor and assiduity which a love of the profession inspires, and his success was the sure reward of ability and merit. His career as a judge was elevating to the bench, and adorned the judicial ermine of the State; and the author regrets that he has not been able to obtain more information in regard to his personal traits and the incidents of his early life.

CHAPTER VI.

THE BAR OF THE REPUBLIC AND STATE — EMINENT LAWYERS, DECEASED —
J. PINCKNEY HENDERSON — R. M. WILLIAMSON — WM. H. JACK — JAMES
WEBB — EBENEZER ALLEN — JAMES WILLIE — O. C. HARTLEY — THOMAS
H. JENNINGS — JOHN A. WHARTON — E. M. PEASE — JAMES W. DALLAM —
W. S. OLDHAM — H. P. BREWSTER — THOMAS M. JACK.

JAMES PINCKNEY HENDERSON.

This distinguished lawyer, soldier and statesman was born in Lincoln County, North Carolina, on the 31st of March, 1809, and descended from an ancient and honorable family whose name is prominent in the early history of that State. His early educational advantages were good, and he was for several years a student at the University of the State at Chapel Hill. He studied law and was admitted to the bar before he was twenty-one years of age. He was an ambitious young man, and was endowed with a brilliancy of intellect which early gave promise of a distinguished career. While preparing for the bar he studied with the most intense application, and often told his friends in after life that during that period he devoted eighteen hours a day to his studies. This injudicious taxation of his powers induced a constitutional weakness from which he never recovered. At the age of twenty-two, he was appointed aid-de-camp, with the rank of major, to Major-General Dorrett, of the North Carolina militia, and was afterwards elected colonel of a regiment.

In the fall of 1835, Colonel Henderson removed to Mississippi, and, having settled at Canton, began the practice

of law with the brightest prospects of success. But he had scarcely tested the opportunities offered him in this new field before his attention was attracted to the struggles of the province of Texas to throw off the oppressive and degrading yoke of Mexican rule. His sympathy was at once enlisted in the cause of the patriots who had hoisted the banner of liberty and the Lone Star, and he determined to devote his energies to their interest. Judge Foote, who was at that time a prominent lawyer and politician in Mississippi, in referring to a speech which he made to an assembly of Texas sympathizers at Canton, in the spring of 1836, thus describes Colonel Henderson at that period: —

“When I stepped down from the rostrum it was gracefully ascended by a young gentleman whom I had never seen before. The person of that young gentleman was noble and commanding; his voice presently proved itself to be both strong and musical; his eyes and whole countenance flashed forth the light of commingled thought and passion. That young orator swept the audience before him like a whirlwind. ‘Who is he?’ exclaimed many voices, and the response was, ‘That is Mr. Henderson, a young lawyer of uncommon promise, and of easy fortune, who has just emigrated from North Carolina and settled among us.’ To the honor of Madison County, be it said that several thousand dollars were at once subscribed, and various young men resolved to go forth to the rescue of their brethren in Texas. I was soon introduced to General Henderson (for by such title is that young orator now distinguished). I spent a day in his society, and have never seen him since. Next morning he started to Texas.”

Soon after his arrival in Texas, Colonel Henderson was commissioned by President Burnett to return to the United States and recruit for the Texan army. He proceeded to his old home in North Carolina and raised a company which he transported to Texas at his own expense. He returned in November, 1836, and was immediately appointed by President Houston Attorney-General of the Republic, and in December following he was made Secretary of State, to

fill the vacancy in that office occasioned by the death of Stephen S. Austin.

Early in the year of 1837, Colonel Henderson was sent as Minister Plenipotentiary and Envoy Extraordinary from the Republic of Texas to the courts of France and England. He was commissioned to solicit the recognition of the independence of Texas by these Powers, and was invested with plenary powers, as ambassador, to conclude treaties of amity and commerce with them. His mission was successful. Both of these Powers soon recognized the independence of the Republic and entered into cordial treaty relations with the new nationality. His eminent talents and noble bearing, and the fidelity and ardent zeal with which he urged the claims of his country to a place among the nations engaged for himself a warm personal consideration, and it was not for Thucidides in his elegant delineations of the events which preceded the Peloponesian war to describe a more patriotic embassy than that of Colonel Henderson to the courts of England and France. His appeals for the recognition of that independence which his country had so nobly achieved, fell in stirring strains upon the proud ears of the great statesmen and diplomatists who at that time adorned the courts of St. Cloud and St. James. He was greatly indebted to the kind services of General Cass, the American Minister at Paris, which greatly aided him in accomplishing his mission to France. He introduced him as a younger brother to the nations, and he was looked upon in Paris as a new apparition of American glory — as another Franklin, fresh from the cradle of liberty.

In 1840, Colonel Henderson returned to Texas, and was welcomed by a universal outburst of applause and the warmest congratulations of his countrymen. A grand dinner was given him at Galveston, and demonstrations of public gratitude and esteem were tendered him by several other towns, which he modestly declined. At the expiration of General Lamar's Presidential term, he was strongly urged to become a candidate for the Presidency of the Republic; but being somewhat under the constitutional age required for that office, he promptly declined the can-

didacy, declaring that he would not violate the Constitution and laws of his country, though no one but himself should be cognizant of the fact. He would not thus incur the reproach of his own conscience and the condemnation of his own heart.

History furnishes but few more striking exhibitions of disinterested patriotism and personal rectitude. Cincinnatus retiring to his plow-share, Regulus advising his countrymen as to their best interest and returning to Carthage in compliance with his oath, Epaminondas asking his judges but one favor, that his *patriotism* be inscribed upon his tomb, present themselves as parallel instances.

Col. Henderson now settled at San Augustine and resumed the practice of his profession; but in 1844 he was sent by his government to Washington as Minister Plenipotentiary to act in concert with Mr. Van Zandt, the Texan Chargé d'Affairs in negotiating a treaty for the annexation of Texas to the United States. Mr. Calhoun, who was then Secretary of State, favored their cause, and they had but little difficulty in accomplishing their object. The treaty was at first, however, rejected by the United States, but through the exertions of the Texan Ministers and their friends in Congress, it was subsequently ratified.

In June, 1845, he was elected one of the members from San Augustine County to the Convention which framed the Constitution of the new State, and his debates in that body are still highly interesting. He was an active and influential member and his views were largely impressed upon the admirable organic law which has conferred honor and prosperity upon the State.

In November, 1845, he was elected Governor of Texas, for which his knowledge of the spirit of the Constitution and its mission rendered him peculiarly suitably, and his thorough knowledge of law and discrimination of character enabled him to select that talent and judicial capacity for the Texas bench which glorified the beginning of its jurisprudence.

His message to the first Legislature was plain, simple and brief, as if he did not wish to burden that body with the

consideration of questions which might in anywise impede the smooth start of the new machinery of government or clog its incipient movements; yet he was urgent for the advancement of those matters which form the great and vital interest of every free community. In reference to the promotion of public justice and popular education, he said: —

“The prosperity, happiness and permanence of every government like ours, where all authority is derived from and exists at the will of the people, greatly depends upon the intelligence and moral and religious character of its citizens. That prosperity, happiness and permanence can be best secured to ourselves and posterity by making liberal provisions for the education of the rising and future generations. By the Constitution it is made the duty of the Legislature to make suitable provision for the support of public schools, and to set apart not less than one-tenth of the annual revenue of the State as a perpetual fund for that purpose, and as soon as practicable to furnish other means for the support of free schools throughout the State by taxation. The slow progress made by most of our sister States in collecting a sufficient fund for educational purposes and maturing plans for public schools, should warn us of the necessity of commencing that important work with our earliest existence as a State. The people of no State have ever yet had occasion to regret the munificence of their Legislature upon this subject, when proper care has been taken to establish a good system of public instruction, and to insure a prudent management of the means appropriated.

“Some confusion will necessarily be produced in our laws by our change of government from an independent republic to a State of the Union. Obscurities have already been introduced into many of our laws by the frequent changes and amendments which have been made or attempted by the Legislature. Our Constitution requires you to provide for a revision of our civil and criminal laws. The interest of the State, it seems to me, requires that it should be done as soon as practicable, and I therefore recommend it to

your especial consideration. A faithful and rigid administration of the criminal laws of every State is necessary; the public peace, safety and morals demand it.

“Economy in the administration of the government is always becoming to the agents of the people — with us it is absolutely necessary. As far as my actions are concerned, as the chief executive officer of the State, I can promise a strict observance of that duty, doubting not that I shall find in you, as the representatives of the people, a corresponding disposition.

“I commend you, gentlemen, to God’s holy care, with a full reliance upon His bountiful providence for the prosperity of our infant State. As He has conducted us through all our dangers and troubles to the desired haven, so will He enable us to ride there in safety. He will keep us in the right path and point out the way in which we may perpetuate our free government.”

These sentiments, falling upon the ears of patriotism, impressed themselves upon the early policy of the State, and his executive influence was as propitious as his legislative and diplomatic services had been valuable.

But it was not long before he was called upon to serve his country in another sphere. When the bill providing for the annexation of Texas passed the United States Congress it was evident that war with Mexico was inevitable. The Mexican Minister at Washington demanded his passports and left the country, and a Mexican army immediately crossed the Rio Grande. Texas was called upon to furnish four regiments of volunteers. They were soon organized, and Governor Henderson was authorized and requested by the Legislature to take command of the new regiments of Texas troops; but at the time of their departure for the seat of war he was confined to his bed. A week later he started in a carriage, without an escort, though it was necessary to pass in close proximity to a large body of Mexican troops, and safely joined the United States army. On the third day of the battle of Monterey he led the Second Texas regiment in person, and during the attack was cut off from his men while reconnoitering,

and was compelled to crawl upon his hands and knees, as Bonaparte did at Vienna, in order to reach his command. Hon. Jefferson Davis, whose command was near that of General Henderson, in describing this circumstance, says: —

“On the third and last day of the attack, when night was closing around us, and we were near to the main plaza, we learned that we were isolated; that orders had been sent to us to retire; that the supports had been withdrawn, and that we were surrounded by a large number of the enemy. A heart less resolved, a mind less self-reliant than Henderson’s might have doubted, wavered, and been lost. The alternative was presented to him of maintaining a post which he was confident we could not hold, or of retiring, when it was doubtful whether we could cut our way through the enemy: he asked no other question than, ‘Are we ordered to retire!’ On learning that such was the fact, he decided, at whatever hazard, to obey; and narrowly on that occasion escaped with his life. The sense of duty rose with him superior to all other considerations; and he obeyed an order which he might have been justified in disobeying, because of the dangers to which it would subject him.” Again says Mr. Davis: “He was gentle as a lamb in the hour of peace and in the midst of his friends; but bold as the lion in the face of danger, and when confronted by an enemy.”

He was one of the commissioners appointed by General Taylor to negotiate with General Ampudia for the surrender of Monterey, and for his services in that battle Congress voted him a sword. He was soon after appointed a major-general in the army of the United States, and was therefore entitled to the pay of that office as well as his salary as Governor of Texas; but so high was his sense of honor and probity in the discharge of public duties, that he declined to accept a dollar of his salary or any compensation from Texas while he held his position in the United States army. After the close of the war he resigned his commission in the army and resumed his duties as Governor of Texas; and at the expiration of his term, declining a re-nomination, he returned to the practice of his profession,

which he continued until 1857, when, upon the death of General Rusk, he was almost unanimously chosen his successor in the United States Senate. He accepted the position with reluctance. His health had become feeble. He felt that his life was drawing to a close, and he desired to spend his last days in the quiet of retirement, but he yielded again to the general voice of the people. In deference, however, to the entreaties of his friends he delayed his departure for the Federal capital. His health continued to decline; but, impelled by an unswerving sense of duty and a desire to be upon the field of his labors, he undertook the journey, and, having tarried a short time amid the orange groves of Cuba, with painful exertion he reached Washington and took his seat in the Senate. But he occupied it only a few days before a fatal reaction ensued, and his spirit passed away in the midst of admiring and sympathetic friends.

While in Paris he met Miss Frances Cox, daughter of Mr. John Cox, of Philadelphia, who was residing in Paris for the purpose of educating his daughters, and they were married in the city of London in 1839. She was a lady of fine intellectual and social accomplishments, and was highly esteemed by the citizens of San Augustine, where she long resided.

General Henderson was par excellence one of the finest lawyers that ever adorned the bar of Texas, and he would have been an ornament to any bar in any age or country. He was distinguished for his mental vigor, clear and penetrating perception, and for the accuracy and perspicuity of his reasoning. He had mastered the fundamental principles of the common law, and his varied and extensive practice endowed him with an accomplished experience in all the branches of jurisprudence, which commanded the greatest success—the best proof of his ability and professional excellence.

He was a man of high sense of honor, and held veracity as one of the most sacred qualifications in every capacity of life. It is said of him that, while negotiating with the French court for the recognition of his country, an event

upon which the fate of Texas depended, he was asked what the population of his country was, and being ashamed to say what he thought it was, and unable to prevaricate even in the deceitful field of diplomacy, he appealed to a French nobleman, who was a friend of Texas and had just returned from that Republic, who promptly replied that the population was about a million. The French courtiers, though astonished at the response, were too polite to question the accuracy of the statement, and the population of Texas, which at that time did not exceed perhaps fifty thousand, was put down in diplomatic figures *about a million*.

As a statesman and patriot, his qualities glowed with equal lustre, and his name will ever glitter in the annals of Texas in glaring association with its youthful glory, and will be handed down to the last corridor of time as that of a man of great probity, courage, and talent, which he devoted to the service of his country, the elevation of his profession and his fellow-man.

ROBERT M. WILLIAMSON.

Robert M. Williamson, one of the most eminent of the early Texas lawyers, was born in the State of Georgia, about the year 1806. His educational advantages were such only as the common schools of that period afforded, and these opportunities were arrested when he was but fifteen years of age by an attack of white swelling which confined him to his bed for two years and rendered him a cripple for life. The disease stiffened the joint of his knee and made it necessary for him to wear a wooden leg, which caused him to be widely known as "three-legged Willie." He was, however, a bright and ambitious boy, and, during his confinement, devoted himself to the study of mathematics and the languages, his knowledge of which was excelled by but few of his cotemporaries.

At an early age he prepared himself for the bar, to which he was admitted at the age of twenty-one years. He entered at once upon the practice of his profession, and acquired a large business and a wide professional reputation. But in consequence of an unfortunate event, which reflected upon him no discredit, he determined to seek a home in the wilds of Texas; to which he emigrated about the year 1826 and located at San Felipe. Here he soon mastered the Spanish language, and, having acquired a thorough knowledge of the land laws of Spain and Mexico, entered upon a successful professional career. He became the adviser and confidential agent of the famous Benjamin R. Milam and contributed largely to the successful fulfillment of his colonial contracts. He was also a warm friend of the two Jacks, the Whartons, Col. Frank Johnson and other congenial spirits of the liberal party, whose patriotic efforts, even at that early day, foreboded the dawning independence

of Texas. He devoted his energies to the accomplishment of a final separation of Texas from Mexico, and so active and energetic were his efforts in this respect that he became especially obnoxious to the Mexican government. In the affair at Turtle Bayou and in all the incipient steps which led to the revolution, as well as during its progress, he acted a prominent and efficient part. He raised troops, aroused the colonists to a sense of their wrongs, and commanded a company of cavalry stationed at Bastrop, where he rendered efficient service in protecting the frontier. Mr. Yoakum, the author of a history of Texas, says: "After a thorough and minute investigation of the records and history of Texas I am constrained to say, that Robert M. Williamson did as much, if not more, than any other man in precipitating and sustaining the revolution of 1835."

Upon the organization of the judiciary of the Republic in 1836, Williamson was selected to fill the position of judge of the Third Judicial District, and changed his residence to the town of Washington. The task of establishing rules of judicial procedure in the midst of a people who had recognized no law but the strong arm of military power, and of eliminating order out of the discordant elements of a revolution was difficult, and required the utmost firmness and prudence. But Judge Williamson was equal to all the demands of his position, and, having set the machinery of justice into a smooth and regular motion, he retired from the bench and resumed his practice at the bar.

In 1840 he was elected to represent Washington county in the Congress of the Republic and held this position by re-election until 1845, when he was elected to a seat in the Legislature of the State; and with the exception of one term, served in one or the other branches of that body until 1850, and never resumed his practice. The exciting events of the period of his political career engaged his energies and led his mind into channels of thought and into habits incompatible with the jealousy of law, and the bar lost a brilliant genius.

In 1850 he was a candidate for Congress and was defeated by a few votes by Volney E. Howard, upon which he re-

tired to a small farm near Independence, in Washington County. In 1857, he had a severe attack of sickness, which seriously impaired his mind, and which was aggravated by the death of his wife which occurred shortly afterward. From these combined shocks neither his health nor his mind ever recovered, and he died on the 22d of December, 1859.

Judge Williamson was a man of brilliant talents and an able lawyer, and his knowledge of law was due perhaps more to his genius than to any steady or prolonged application. His comprehension was intuitive. The flashes of his intellect illumined every subject upon which his mind rested, and he grasped the merits of a case with an avidity which no subtlety of combination could parry, and no speciousness of reason could evade. He was a man of remarkable force of character and of dauntless courage, and possessed great influence over the sympathies and passions of the varied elements which characterized the society of the Western border. His generous, unselfish spirit, and amiable manners captivated the people, and they idolized him.

As an orator, he was the Patrick Henry of Texas, and, like him, his oratory was of that kind which stirred the heart while it swayed the mind of his audience. He was one of the few lawyers of whom it may be said that a natural eccentricity, and an overweening propensity for ludicrous quaintness and badinage never impaired the most implicit faith in his sincerity, nor weakened the force of his gravest argument; but, on the other hand, the force of his wit was blended with the power of wisdom. It was not with him, as Dr. Johnson says of Shakespeare, an irreconcilable fondness for "a mere quibble which allured him from the dignity and profundity of his disquisitions," nor the "Cleopatra for which he lost the world, and was content to lose it," but it was the aroma which sprung from the blossoms of his genius.

With such a blending and adjustment of pre-eminent qualities and gifts, the career of Judge Williamson flashes like a meteor across the early annals of Texas; and, had it

been cast in the midst of more favorable circumstances, would, no doubt, have adorned the jurisprudence of the State.

Though dwelling in the midst of speculation and easy opportunities for the acquisition of independence and wealth, he seems to have had no desire for the accumulation of property. His generous and improvident disposition precluded him from the paths of economy, and he often felt and endured the pecuniary embarrassment and domestic straight which Juvenal calls *res angusta domi*.

While Judge Williamson was noted for his sudden flashes of wit and pleasing humor, he was much addicted to spells of melancholy, which foreboded the mental infirmity to which he became a victim. But he was always kind and courteous in his demeanor, and took a paternal interest in the young men at the bar, extending to them at every opportunity a helping hand and kind words of encouragement. He had but one fault, one which often pervades the pur-
lieus of professional eminence, but it was lost in the train
of his virtues.

WILLIAM H. JACK.

William Henry Jack was born in Wilkes County, Georgia, on the 12th of April, 1806. His father, Patrick Jack, was for several years a prominent member of the Legislature of Georgia, and commanded a regiment during the war of 1812. His grandfather was Captain James Jack, of Charlotte, North Carolina, who bore on horseback the famous Mecklenburg Declaration of Independence to the Colonial Convention at Philadelphia, and who subsequently commanded a company in the war for independence.

The educational advantages of William H. Jack were the best that the schools of the period afforded, and, having graduated with honor at the University of Georgia, and prepared himself for the bar, he removed to Tuscaloosa, Alabama, and began the practice of his profession. In 1828 he represented Jefferson County in the Legislature of Alabama, and in 1830, actuated by a spirit of enterprise and adventure, he removed to Texas, and located at San Philipe de Austin, which was at that time the professional and political metropolis of the Province, and a place of much business activity.

Here Mr. Jack entered zealously upon the pursuit of his profession with every prospect which energy, culture and thorough training could offer. But in 1832 an event occurred which led him to turn his attention to political affairs, inspired him with new aims and gave a new color to his life. His brother, Patrick C. Jack, William B. Travis and Monroe Edwards having incurred the displeasure of Col. Bradburn, the commander of the Fort of Anahuac, were arbitrarily arrested and imprisoned by the command of that officer. Mr. Jack immediately proceeded to the fort for the purpose of ascertaining the nature of the

offense, if any, with which the prisoners were charged, and either to secure their release or obtain a trial for them before the civil authorities. But Bradburn treated the object of his mission with contempt, and informed him that the prisoners would be sent to Vera Cruz and tried by a military court. Well knowing what would be the result of this proceeding, he returned with a sad heart to San Philipe, and having assembled some of his friends, announced to them the circumstances and result of his visit to Anahuac. Resistance was determined upon, and he was sent out to arouse the colonists to a sense of their wrongs, and promote measures of defense. In the meantime the news of the arrest of the three citizens spread rapidly, and caused great excitement among the colonists upon the Brazos and Trinity, and in other sections. Volunteers assembled from all the settlements, and were organized under the command of Francis W. Johnson. The relief proceeded at once towards Anahuac, but finding that Bradburn was being supported and reinforced by the commander of the post of Velasco, they determined to attack that fort immediately. Velasco was taken, Bradburn released his prisoners, and abandoned the fort of Anahuac; and thus began the opening campaign of the Texas Revolution.

Mr. Jack was the author of the "Turtle Bayou Resolutions," adopted during their expedition against Anahuac, which, while they declared the fidelity of the colonists to the Mexican Constitution, demanded in unmistakable terms the rights and liberties of the people, and was the first public remonstrance of the Texans against Mexican oppression.

During the war which followed he acted a conspicuous part, and was devoted to the cause of Texas independence.

In 1835 he was a member of the Committee of Safety for the jurisdiction of Columbia. He had no turn or ambition for military rank. He was a private trooper in the command that captured Goliad, and fought in the ranks in the battle of San Jacinto. After the close of the war he was appointed Secretary of State by President Burnet. In 1836 he was elected to a seat in the Congress

of the Republic, and was chairman of the judiciary committee. He served in that body continuously until the year 1844, when, having contracted the yellow fever while on a visit to Galveston, he died with that disease in Brazoria County, on the 20th of August, 1844, a few days after the death of his brother, Patrick, who died in Houston with the same malady.

Mr. Jack was a distinguished lawyer of his day, and considered one of the ablest at the Texas bar; and had his life been spent in more settled times, in the midst of peaceful pursuits and under a well organized jurisprudence, his professional record would have been eminent. Thoroughly educated and well versed in fundamental principles, he possessed the qualities of an able advocate and the qualifications of a great lawyer. These consisted of a combination of learning, noble traits of character and fine social accomplishments. He was a man of fascinating manners, mild and forbearing in his intercourse with the many reckless and uncouth characters of the country, with whom his professional business brought him in contact. He was a forcible and graceful orator. He possessed a *lactea ubitas* of diction and the *vox argentea*, so highly commended by Cicero. He was selected by his countrymen to deliver the address of congratulation and welcome upon the return of General Austin from Saltillo, where he had for two terms represented his people in the Legislature of the State of Coahuila and Texas. In this speech, Mr. Jack, in addressing the father and founder of Texas, said:—

“Such a boon, then, as is due to him who has faithfully discharged his duties, we grant you, with an assurance that the man whom the people have delighted to honor, still has our most unbounded confidence. The occasion of your most unexpected return to Texas will be long remembered. The present is an epoch in the political affairs of our country on which the pen of the historian will dwell with peculiar pleasure. In conclusion, I can not, perhaps, better express my own feelings and those of our common countrymen than by saying: Well done, good and faithful servant; thou art welcome, thrice welcome, to thy home

and to thy friends ; and may health and happiness always attend thee ! ”

Cut off in the meridian of a useful life, the death of William H. Jack was a great loss to his country, and had he lived the allotted time of man his talents and patriotism would have added new embellishment to the days of annexation and to the bar of the State of Texas.

JAMES WEBB.

This eminent lawyer and good man was born in Fairfax County, Virginia, in the year 1792. He was well educated and was admitted to the bar in his native State, but soon afterward removed to Jones County, Georgia, where he practiced his profession with distinction and success. He subsequently settled at Webbville, in Florida, a place named for him, on the Chipola river. Here his eminence as a lawyer became so distinguished that he was appointed judge of the United States Court for the district of Florida and held his courts at Key West and Tallahassee.

In 1838 he removed to the Republic of Texas and located at Houston, but soon afterward settled at Austin. He was Secretary of State and Attorney-General under the administration of President Lamar, and was sent by him in company with General Barnard E. Bee as Minister and Agent to the City of Mexico. In 1841 he was elected to the Senate of the Republic and was re-elected to the three succeeding Congresses, in which he was chairman of the Judiciary Committee of the Senate and a member of the Committee on Foreign Relations.

In 1840 he returned to the bar and practiced in copartnership with Judge F. A. Morris, and afterward with Judge W. S. Oldham. He was an active worker in the cause of annexation and, while not a member of the Convention of 1845, he assisted in framing the articles of confederation between Texas and the United States. On the organization of the judiciary of the State in 1846, he was appointed judge of the Fourteenth Judicial District, and held that position at the time of his death, which occurred on the 1st of November, 1856, while on his way to hold court at Goliad.

The author regrets that in consequence of the loss of family papers and records he has not been able to obtain more information in regard to the early life of this accomplished lawyer. Prodigal with learning and research, he had no superior at the Texas bar, and was the most able district judge of his time upon the Texas bench.

In the case of the *State v. Jones*, 18 Texas, 874, tried before him in the District Court, in which he decided that in prosecutions for misdemeanors incurring only a pecuniary fine the case may be submitted to the court upon an agreed statement of facts as in civil cases, and that the overseer of a road can not be held liable for failure to repair a road within an incorporated town, on appeal being taken, Chief Justice Hemphill ordered his opinion in the District Court to be incorporated in the transcript and published as the opinion of the Supreme Court. This was certainly a high compliment, and is the only instance of the kind within the author's knowledge.

Above his last resting place in the cemetery at Goliad, rises a marble shaft, erected by his noble and affectionate daughter, Mrs. Mott, of Galveston, upon which are inscribed on one side, the simple words: —

“James Webb, died November 1st, 1856, aged 64 years;” and on the opposite side, the plain, touching line: “Sacred to the memory of my father.”

Thus oftentimes lives the only story of departed worth; but Judge James Webb needs no monumental trophies or storied inscriptions to perpetuate his memory; it lives upon the pages of the history and jurisprudence of his country.

EBENEZER ALLEN.

Ebenezer Allen, a gentleman prominent among those who adorned the early jurisprudence of Texas, was a native of Maine, and having attained an excellent education, was admitted to the bar in that State. He emigrated to Texas during the early period of the Republic, and, being an able lawyer, was made Attorney-General under the second administration of President Houston, and filled the same office during the Presidential term of Anson Jones. In 1849 he was elected Attorney-General of the State, and served in that capacity during the administration of Governor Bell.

His eminence as a lawyer, and his efficiency as the counsel of the State were amply verified by the prolonged demand for his talent. He was also an accomplished diplomatist, and acted a prominent part in the negotiations which led to the annexation of Texas to the Union. While serving as Attorney-General under President Jones, he performed also the duties of Secretary of State, and conducted an important and interesting correspondence with Mr. A. J. Donelson, the Minister of the United States to the Texas Republic. The following characteristic letter is illustrative of the events immediately preceding the annexation, and its consequence — the war with Mexico:

“ DEPARTMENT OF STATE, }
“ WASHINGTON, TEXAS, May 19, 1845. }

“ The undersigned, Attorney-General of the Republic of Texas, charged *ad interim* with the direction of the Department of State, respectfully invites the attention of the Hon. Mr. Donelson, Minister Charge d’Affairs of the United States, near this Government, to the following con-

siderations respecting the interests of the two countries, whether viewed in the existing attitude of their mutual relations, or in that of their probable and prospective connection.

“ It can not have escaped the notice of the Hon. Mr. Donelson, that, from the tenor of the late communications of General Almonte to the President of the United States, when demanding his passports as Minister Plenipotentiary and Envoy Extraordinary of the Government of Mexico, Texas is still claimed by the latter as one of its departments, and that belligerent measures are threatened to maintain this claim; also, that from the newspaper accounts of the termination of all diplomatic intercourse with the American Minister at Mexico, the same belligerent attitude is manifested by a circular alleged to have been addressed to the representatives of England and France at that court.

“ From the tone of these manifestoes, a new invasion of the territory of Texas may reasonably be apprehended if the proposals lately received from the United States for the annexation of Texas to the Federal Union should be accepted by Texas; of which result the sure indications of the popular will, exhibited from the various positions of the Republic, present to the mind an assurance so strong as to challenge conviction, and leave scarcely a possible room for doubt.

“ For the reasons suggested, the undersigned deems it his duty to respectfully inquire of Mr. Donelson whether, under such circumstances, calculated to excite the reasonable apprehensions of the people of Texas, and especially to disturb the tranquility of the settlements along her western frontiers, it would not be alike proper and consistent for the United States to extend its protection to this Republic?

“ The people of Texas would regard the presence of the requisite force on their frontiers in no other light than as an act of justice and friendship, properly accorded during the pending of the measures in progress for annexation, and as an indication of the aid justly due them in the completion of the constitutional steps yet necessary to their admission into the Union.

“The performance of the conditions required by the United States of Texas, in acting upon the terms of overture for annexation, necessarily subjects the people of this Republic to very onerous expenses, the burthen of which operates with far greater severity in consequence of the non-payment of the sums due to this Government from the United States for claims arising in the cases of Snively and the collectoral district of Red River.

“The undersigned can not for a moment entertain the belief that the United States will require that Texas shall alone sustain these burthens; and especially in the event of a renewal of the war by Mexico, that this Republic will be expected to bear exclusively its burthens; since, in reality, such a war would be hastened and occasioned by the acts, and aimed at the interests no less of the United States than of Texas.

“To this subject the undersigned has, by direction of the President, solicited the attention of the Hon. Mr. Donelson, and has been authorized by him to say that, in case of the anticipated emergency, the passage of the United States troops through the Texan Territory to its western frontier will be welcomed and facilitated by the constituted authorities as well as by the people of the country.

“The undersigned renews to Mr. Donelson the assurances of his distinguished consideration and regard, and remains his most obedient servant.

“EBENEZER ALLEN.”

To this communication Mr. Donelson replied, that he was instructed by the President of the United States to say that as soon as the existing Government and Convention of Texas should accept the terms of annexation offered by the United States, he would then conceive it to be both his right and duty to defend the State against the attacks of any power, and that if, in the meantime, the necessary emergency should arise, troops would be furnished to repel an invasion.

After the expiration of his term as Attorney-General of the State in 1853, Mr. Allen retired from official life and

resumed the practice of his profession. He afterwards became deeply interested in the construction of railroads, and was one of the projectors and early managers of the Texas Central Road. But when the aggressions of the North upon the institutions of the South culminated in 1860 in an organized and avowed hostility and an "irrepressible conflict," he was as desirous of withdrawing the Lone Star from the banner of the Union as he was of placing it there in 1845; and when the war began he entered the Confederate service, and died in Virginia in 1863.

JAMES WILLIE.

This distinguished lawyer was born in Wilkes County, Georgia, on the 5th day of January, 1823. His educational opportunities were confined to his early youth, and having enjoyed during that period only such advantages as the common schools of his nativity afforded, he was thrown an orphan upon his own resources. But possessed of an active mind, a combative energy and commendable aspiration, he sought only for an opportunity to rise above the circumstances and trammels of his early life, and developed the germs of a bright genius and the elements of a noble character.

He left his paternal home before he had reached the age of his majority and boldly throwing himself into the life of manhood, emigrated to Texas and located near Independence, in Washington County, where he was encouraged and aided by his uncle, Dr. Asa Hoxie, an eminent and affluent citizen of that county. Here he prepared himself for the bar, began the practice of his profession, and resided during the greater portion of his life.

In 1846 he was elected to represent his county in the first Legislature of Texas, which was convened under circumstances requiring the wisest and best men of the State, and his talents and discretion were conspicuous in the varied and difficult proceedings involving the task of framing laws in compliance with the requirements of the new Constitution and of putting the machinery of the State government in proper motion. He was considered one of the ablest and most useful members of the body, and as a recognition of his eminent services, he was re-elected to the second Legislature, and afterwards, declining all political honors and

discarding all official aspirations, he devoted himself closely and vigorously to the practice of his profession.

In 1856 he was made the nominee of the Democratic party for the position of attorney-general, and was elected by a large majority of the popular vote. He discharged the duties of that office with great honor to himself and in a manner highly serviceable to the State, and at the expiration of his term, declining re-election, he retired finally from official life, and, with one exception, devoted the remainder of his days to the demands of an extensive practice.

In pursuance to an act of the Legislature of Texas, passed in 1854, Mr. Willie was appointed by Governor Pease to co-operate with John W. Harris and O. C. Hartley, in amending revising and arranging both the civil and criminal laws of the State, and in dividing their labor the task of revising and compiling the civil laws was assigned to Mr. Hartley, while Messrs. Willie and Harris proceeded jointly to arrange and codify the criminal laws; and the excellent Penal Code and Code of Criminal Procedure of Texas are the results of their labors. Pursuant to the act Mr. Willie was appointed to prepare their indices and superintend their publication, which he accomplished without material error in the most convenient form. These Codes were adopted by the Legislature in 1856, and contain all the criminal laws recognized as of force in the State.

Mr. Willie was a man of great natural power of mind. His talent was brilliant and his energy indomitable; these enabled him to climb continuously and rapidly to a high place of professional eminence. He was a man of versatile genius and varied learning. His mind was of the highest analytical order, developed and matured by severe training. His perception was acute and vigilant, quick to seize upon the gist of a proposition, and profound and searching in its penetration. His judgment tutored to exactness by a thorough understanding and balanced by caution and correct association was rarely at fault in determining the real character and merits of a legal question, and he was one of the best practitioners at the Texas bar. His logic was verified

by a chain of irrefutable points, linked with sound reason, and his briefs were always well prepared and well argued. Supported by an ample store of precedent, strong powers of analogy and parity of reason, and above all by a thorough knowledge of statute laws, his positions, even amid the lurid merits of a doubtful case, were always well fortified and exercised a cogent bearing upon conviction.

His personal qualities were such as adorn the best minds, and the best characters. He was a man of the highest sense of honor. Stern and inflexible in the performance of duty, yet amiable and kind in his disposition, punctilious in gentlemanly amenities and professional ethics, and was an ornament to the bar and society.

During his practice Mr. Willie was associated with several gentlemen of distinction, among them Judge W. S. Day, of Austin, and his younger brother, Chief Justice Asa H. Willie. His last partner was the gallant Col. W. P. Rodgers, the place of whose death and the charge he made are told and pointed out to every stranger on the heights that overlook Corinth.

Mr. Willie was married in early life to Miss Sallie Johnson, the accomplished daughter of Judge Thomas Johnson, of Washington County, and who at the time of his death in 1848, was the attorney for the Washington judicial district. She is said to have been a most beautiful and lovely woman, and crowned his life with the highest domestic felicity. He died at Houston in 1863.

O. C. HARTLEY.

Oliver Cromwell Hartley was born in Bedford County, Pennsylvania, on the 31st of March, 1823, where his ancestors, who emigrated from England, settled soon after the American Revolution. He was educated at Franklin and Marshall College, from which he was graduated, and honored with the valedictory address of his class in 1841. He afterwards studied law in the office of Samuel M. Barclay, an eminent lawyer of Bedford, and at the age of his majority was admitted to the bar and began the practice of his profession. In 1845 he was married to Miss Susan C. Davis, of Bedford, and in 1846 removed to Texas and located at Galveston. The Mexican war was now the object of public attention and interest, and a call was made for volunteers to rescue the little army of Gen. Taylor from its perilous position on the Rio Grande. Mr. Hartley volunteered as a private, and hastened with his company to the seat of war, which he reached soon after the battles of Palo Alto and Resaca had been fought, and which enabled the American commander to assume the offensive, and there was no immediate need for the services of the company to which he was attached. On the organization of Colonel Johnson's regiment, he was elected a lieutenant in the company from Galveston, which, having been disbanded during the summer, he returned to that city, and resumed his practice with intense application.

The statutes of the State were at that time arranged in much confusion, and the members of the bar greatly felt the inconvenience occasioned by the want of a sufficient digest. Mr. Hartley prepared a synoptical index of the laws for his own use, which became the basis of his admirable Digest of Texas Laws. This work was begun in 1848, and

was submitted to the Legislature in the spring of 1850, which authorized the Governor to subscribe for one thousand five hundred copies for the use of the State. His digest fully met the wants of the profession, and was justly regarded as a work of great merit and perfection.

In 1851 he was elected to represent Galveston County in the Legislature, in which he was distinguished as an efficient and useful member. It was said of him that "he was noted for the frankness and independence of his bearing, and his refusal to enter into the intrigues and cabals by which legislation is so often controlled."

While a member of the Legislature he was appointed reporter of the decisions of the Supreme Court, and held this office until his death. His skill as a reporter is recognized as eminent. His analysis is accurate and thorough, and his *syllabi* present a clear and concise exposition of law. He was especially apt and felicitous in eliminating distinctive principles and establishing legal results from complicated relations and views arising from a combination of facts, and his efforts greatly aided in the development of the peculiar system of Texas jurisprudence.

In February, 1854, he was appointed by the Governor one of the three commissioners authorized by the Legislature "to prepare a code, amending, supplying, revising, digesting and arranging the laws of the State." The other members of the commission were John W. Harris and James Willie, and in their division of the labor, the preparation of a "Code of Civil Procedure" was assigned to Mr. Hartley. To this work he applied himself with intense application, and with an ambition that the civil code of Texas should be superior to that of any other State in the Union; and as an adjunct to its value and merits he prepared a complete system of forms to be used in all civil proceedings; but the State was not prepared to adopt a new civil code, and its publication was postponed.

The assiduity with which he pursued his labors upon this work, and which was afterwards unremittedly applied to his duties as reporter and the demands of his profession, finally undermined a naturally robust and vigorous consti-

tution. He became a martyr to his industry and ambition, and died of apoplexy of the brain at his residence in the city of Galveston on the 13th of January, 1859.

Mr. Hartley was a thorough scholar. Possessed of a patient fondness for investigation and the acquisition of knowledge, he had, from his early youth, devoted his life to its pursuit, and his mind was disciplined by a thorough and systematic training, and expanded by constant intellectual nourishment. Before he left his native State he had attracted the attention of Judge Jeremiah Black, who was at that time chief justice of Pennsylvania, whose friendship he secured and retained. He had also won the interest and esteem of Mr. Buchanan, who gave him flattering testimonials as a *sessame* to public confidence in Texas.

As a lawyer, his philosophical turn of mind led him to closely investigate the relations of things, and to study their correct association; hence his skill in analysis was acute, and his powers of comparison and parity of reason, of a high order. He was careful in the selection of his premises, and when conscious of their correctness his conclusions were deduced in a clear and logical train. He had accustomed himself to look at both sides of a question, and perceiving the proper line of attack, he was prepared to adopt the most effectual line of defense.

Notwithstanding his devotion to his profession, and his ambition to attain a high position at the bar, Mr. Hartley took a deep interest in the political issues of his day, and sought to measure all doubtful questions by the authority of the Constitution. He was a good constitutional lawyer, and his patriotism was kindled by the discussion of its interpretation and the merits of its provisions. He was exemplary in his private and social life. Reared by a Christian mother, he was early guided into the walks of piety, and at his death was a member of the Episcopal Church. He was one of the few precocious youths whose after life realized the hopes of parental ambition and the promises of early years. He possessed a high sense of honor, and his conduct was guided by an enlightened judg-

ment and sensitive conscience. When the Legislature authorized the Governor to subscribe for his digest it prescribed that the binding should be *law calf*, and when his publishers remonstrated against that kind of binding and suggested *law sheep*, the usual material for such work, he insisted that it should be bound in the material designated by the Legislature, though it was apparent that the requirement was the result either of ignorance or inadvertence. His works will preserve his name and memory as long as there remains an annal of Texas jurisprudence.

THOMAS J. JENNINGS.

Thomas Jefferson Jennings, an eminent lawyer and Attorney-General of Texas, was born in Shenandoah County, Virginia, in the month of October, 1801. His father, William Jennings, was sheriff of that county for a number of terms, and, in 1808, represented it in the Legislature of Virginia. He subsequently removed to Kentucky and settled in Todd County, where the subject of this sketch was chiefly reared and prepared for college. He graduated with first honors at the Transylvania University in 1825, and afterward taught a school in Tennessee two or three terms, during which he prepared himself for the bar.

In 1828 he began the practice of law at Paris, Tennessee, but shortly afterward removed his office to Huntington, where he entered upon the path of professional distinction in which he continued to advance during the remainder of his life. In 1835 he emigrated to Mississippi and settled in Yazoo City, where he obtained a large and lucrative practice. In 1840 he removed to Texas and located in San Augustine, at that time the Temple Bar of the young Republic, at which many eminent lawyers and judges began their successful career; but having remained one year at San Augustine he located permanently at Nacogdoches, where he practiced in copartnership with Judge W. B. Ochiltree until his talents and ability were recognized and confirmed by official promotion.

In 1852 he was elected Attorney-General of the State, and was re-elected in 1854. He declined a re-election in 1856 against the popular wish that he should continue in that office, and retired to his plantation near Alta, in Cherokee County. But the efficiency of his public services were too highly appreciated to be dispensed with, and in 1857

he was chosen to represent that county in the Legislature.

He was strongly Southern in his views and sentiments and favored prompt and vigorous measures of resistance to the threatening attitude of the incoming administration of President Lincoln toward the institutions of the South. He was a member of the Texas secession convention in 1861, in which, with a conscientious conviction of right, he cast his fortune and sacred honor with the fate of the Confederacy. He was soon afterward stricken with paralysis, by which he was confined to his bed for nearly two years and never fully recovered from the effects of the attack; but having removed in 1864 to Tyler, he formed a copartnership with Thomas Selman and continued his practice there until 1877, when he removed to Fort Worth, which was the field of his last professional labors. He died at the latter place on the 20th of September, 1881.

JOHN A. WHARTON.

The subject of this sketch was born in Nashville, Tennessee, during the month of April, 1809. His parents were natives of Virginia. His father, William Wharton, was born and reared in Albemarle County, and his mother, whose maiden name was Judith Harris, was reared in the adjoining county of Nelson. They removed to the neighborhood of Nashville soon after their marriage and were among the pioneer settlers of that country.

John lost his father when he was about seven years of age, and in a short period his misfortune was more than doubled by the death of his excellent mother. Thus situated, his uncle, Jesse Wharton, who was also a citizen of Nashville, became the guardian of his person and his little fortune. He gave him the best opportunities for acquiring an education that Nashville could then afford; but John is said to have been averse to the discipline and application necessary to attain distinction as a scholar; yet he was an ambitious and aspiring youth, and as soon as he was qualified, chose the law as his profession, and began a vigorous preparation for the bar.

Having obtained his license, and finding the bar at Nashville crowded with many lawyers of eminence, he saw but little immediate prospect for one of his age and attainments, and determined to remove to New Orleans and seek his fortune by the practice of his profession in that city. He was but twenty-one years of age when he located in New Orleans, where he maintained himself by his practice for about four years.

In the meantime his older brother had married a Texan lady and had become a resident of this State; and it was apparent that the Texans would soon declare their independence of Mexico and establish a government for themselves. This prospect opened a new and inviting field

to young Wharton. He had been reared in the immediate neighborhood of General Jackson, of whom he was a great admirer, and drawing his inspirations from the fame and sentiments of that famous chieftain, he immediately and ardently espoused the cause of Texas.

In 1833 he abandoned his residence and his practice in New Orleans and removed to Brazoria County, where his brother then resided, and from that time became a zealous advocate of the Texas Revolution. The history of those times shows that as early as the 23d of June, 1835, the municipality of Columbia, in the county of Brazoria, had the honor of first calling for a consultation. The citizens of the county generally approved this course, and at a public meeting held on the 15th of August following, instructed their committee of safety to prepare an address to all the people of Texas, requesting union and concert of action for a general consultation of all the municipalities.

In furtherance of this movement, John A. Wharton, Branch T. Archer, William H. Jack and others, were appointed a committee, who, on the 20th of August issued an address which was dispatched to all the jurisdictions, advising that an election should be held in each municipality on the 5th of October, for the purpose of choosing five delegates to represent them in a consultation to be convened at Washington ten days afterwards.

In this and in all subsequent proceedings, John A. Wharton was among the leading spirits. In the conflict which shortly ensued, he was the adjutant-general of General Houston, and bore a conspicuous part on the battlefield of San Jacinto. When the onset was over and the Mexicans surrendered and threw down their arms, he was as solicitous to save the lives of the prisoners as he had been but a few moments before to win the battle.

It will be borne in mind that this occurred within a very short time after the massacre of the Texas soldiers at the Alamo and Goliad; and the soldiers at San Jacinto, burning to revenge the deaths of those who had been their comrades in arms, charged upon the camp of the enemy with the inspiring war cry, "Remember the Alamo! Remember

Goliad!" So intense was the excitement, that they continued to massacre the Mexicans after they had surrendered and thrown down their arms. To arrest this, Wharton threw himself, as it were, between the parties, and commanded the Texan soldiers to cease firing upon the enemy. Finding that one man disobeyed his command and was about to fire upon a Mexican, Wharton drew his pistol and leveled it at the disobedient soldier, commanding him to desist. At the same time, so great was the excitement that three other Texan soldiers leveled their rifles upon Wharton, determined to shoot him if he executed his threat.

Thus this brave and noble man saved the life of a suppliant enemy at the imminent peril of his own.

On the day after the battle, when General Santa Anna was taken to the headquarters of Houston, in the disguise of a common soldier, Wharton, fearing that, if he was recognized by the Texans, they might, in their blind fury, put him to death, had recourse to a ruse whereby he could command the attention and acquire influence over the minds of the soldiers. Having assembled them by a call "To arms!" he addressed them as follows: "Soldiers, on yesterday each individual in this gallant army covered himself with glory, winning the freedom of our country by conquering a force more than twice our numbers. You have defeated in battle and taken as prisoner the commanding general of the Mexican army, Santa Anna, the President of eight millions of people. He, who but yesterday deemed himself the arbiter of others' lives, is now a suppliant for his own. Remember, soldiers, that the truly brave are always generous, always merciful. The eyes of the world will soon be attracted towards us by the glory of our achievements. Let us do nothing to tarnish our arms; but, on the contrary, let us prove to mankind that we are as generous as we are brave." This speech perhaps saved the illustrious prisoner from assassination and the army of San Jacinto from disgrace.

The next office held by Colonel Wharton was that of Secretary of the Navy. After the Mexican army had abandoned Texas and the courts were organized, in the year 1837, he opened an office in the town of Brazoria and

engaged again in the practice of law. E. M. Pease, Esq., became his partner, and they practiced together under the firm name of Wharton & Pease, until the month of April, 1838. Then John W. Harris became a partner of the firm, and the three practiced together under the name of Harris & Pease. Their practice soon became extensive, and they were engaged in the most important cases.

In the summer of 1838 Colonel Wharton was elected to represent the county of Brazoria in the House of Representatives of the Republic. He repaired to Houston (which was the seat of government), in the fall of 1838, to be present at the meeting of Congress. There he was taken violently ill and died in the latter part of that year.

John A. Wharton was a man of a superior caste of mind. He was self-relying; formed his opinions from his own judgment, and was of a stern and independent will. He was regarded as one of the leading lawyers of the Republic. At the bar he was esteemed an able competitor. He was a logical and eloquent debater, and his high moral standing gave great weight to his arguments. The consequence was that he practiced his profession with great success.

Among those with whom he associated he had the warmest and most devoted friends. These he deserved to have; for those who knew him best were at a loss which to admire most—the elevation of his mind or the generosity of his heart.

I can not better conclude this sketch than by quoting a few extracts from the eulogy pronounced upon Colonel Wharton by David G. Burnet, the ex-President of the Republic. When his remains were brought into the House of Representatives, and the members of Congress with many others were there assembled, the venerable ex-President commenced his eulogy thus: “The keenest blade upon the battle-field of San Jacinto lies broken before you.”

In a subsequent portion of his address he said, “A nobler spirit than John A. Wharton’s does not adorn the annals of Texas;” and to show the nobility of Wharton’s nature the speaker continued: “And all the oppressed that wanted strength had his at their command.”



Gov. E. M. Pease

ELISHA MARSHALL PEASE.

The subject of this memoir was born in Enfield, Connecticut, on the 3d of January, 1812. His early educational advantages were limited to the schools of his native town and a short attendance at an academy in West Field, Massachusetts. At the age of fourteen years he was placed as a clerk in a country store and early acquired a knowledge of accounts, and the habits of promptness and punctuality in business, which characterized him in after life and insured for him a successful career.

While in New Orleans on business in the fall of 1834 he was allured by the glowing accounts which he heard of the features and prospects of the country west of the Sabine, and determined to seek a home and fortune in its virgin wastes. He proceeded to Valasco and thence to the frontier settlements on the Colorado and located at Mina, now the town of Bastrop, where he began the study of law in the office of Colonel D. C. Barrett, who had just entered upon the practice of the profession. He pursued his studies with energy and vigor; but his clerical qualifications caused him soon afterward to be appointed secretary of the Committee of Safety for the jurisdiction of Mina, and in this capacity he began that active participation in public affairs which continued with intervals throughout his long, eventful and useful life.

The first sounds of the Texas Revolution in 1835 kindled the most ardent sentiments of patriotism and awakened every energy of its people. Mr. Pease was engaged in the first skirmish of the war at Gonzales, and was soon afterward made secretary of the council of the Provisional Government, and held that position until the government *ad interim* intervened in March, 1836. So marked and recognized

were his abilities that, although he was not a member of the convention which declared the independence of Texas, they were invoked to assist in framing the ordinances of the new government and the Constitution of the Republic. During the summer of 1836 he served successively as chief clerk of the navy and treasury departments, and for a short time acted as Secretary of the Treasury upon the death of Secretary Hardeman.

In November, 1836, he was appointed clerk of the Judiciary Committee of the House of Representatives, and drafted the laws organizing the judiciary of the Republic, and the laws creating and defining the duties of the various county officers. At the close of the first session of Congress in December, 1836, President Houston tendered him the position of Postmaster-General; but he declined the office and returned to the study of law in the office of Colonel John A. Wharton, of Brazoria.

In April, 1837, he was admitted to the bar at the town of Washington, but soon afterward accepted the office of Controller of Public Accounts. He resigned this position in the ensuing December and retired to Brazoria, where he resumed the practice of law in copartnership with Colonel John A. Wharton. In 1838, John W. Harris became associated with them, and after the death of Colonel Wharton, which occurred soon after, the firm of Harris & Pease continued for many years, and became one of the most distinguished in the State. During this period Mr. Pease served as district attorney for a short time, and after annexation, in 1846, was elected to the first Legislature from Brazoria County. In the business of this assembly he took an active part, and was the author of the laws regulating proceedings in the District Courts and of many other laws of importance enacted during that session. He was re-elected to the House in the second Legislature, and, as chairman of the Judiciary Committee, originated the probate laws of 1848.

In 1850 he was elected to the Senate in the third Legislature, and served during the regular session; but, being absent from the State when an extra session was convened

by Governor Bell during that year, he resigned and terminated his legislative services.

In 1853 he was elected Governor of the State and was re-elected in 1855. The period of his administration was one of great prosperity, and measures were adopted which promoted the permanent welfare of the State. The revolutionary debt of Texas was paid, a school fund of two millions of dollars was created; alternate sections of lands granted to railroads were set apart for the benefit of public schools; the lunatic asylum, orphan asylum, institutions for the deaf and dumb, and for the blind, were established, and ample grants of lands were made for their support. One hundred thousand dollars were set apart for a State university. All these measures were recommended by him and effected by his influence. The expenses of the State government were restrained below the amount of revenue derived from taxation, and at the close of his administration Texas was entirely free from debt. His rejection of the attempted deposit of the spurious Pacific Railroad bonds and other instances of watchful care over the interest of the State saved to it large sums of money. Governor Pease always acted with the Democratic party until the policy of secession drove him from it in 1861. He did not think that there was anything in the situation of affairs to justify that measure, and he viewed it as a sure path to disaster and humiliation. He remained in Texas during the war, but took no part in public affairs, and after its close acted with the Republican party. In 1867 he was appointed Provisional Governor of the State by the military authorities and held that office until 1869, when he resigned in consequence of a difference of opinion between him and the commander of the district in regard to the reorganization of the State government. He represented Texas in the convention at Cincinnati in 1872, which nominated Horace Greeley for President. In 1874 the office of collector of the port of Galveston was offered him by Secretary Bristow, which he declined, but accepted the position in 1879 when it was tendered him by President Hayes, which was his last public service. He was afterwards vice-president of the First National Bank

of Austin, and died at Lampassas on the 26th of August, 1883.

Governor Pease was endowed with intellectual talents of a high order. He was quick to perceive the character and gist of a proposition, acute in discerning those features of a question which form the hinges of reason, and prompt in the exercise of a sound judgment. He possessed great intellectual independence, and, however extensive may have been his knowledge of the opinions of others, always relied upon himself for a satisfactory and conscientious solution of the facts and principles which underlaid the subjects of his investigation.

As a lawyer these qualities rendered him a safe and sure-footed guide and counselor. His conclusions were the result of a deep and patient search for truth. His judgment was sustained by a calm, impartial and discriminating mind, and his views were maintained with honesty and candor. Few lawyers were more expert in determining the merits of a case upon proper statement of the facts, and he never counseled hopeless or doubtful litigation, but made it a rule to advise his clients that a bad compromise was often better than a good suit.

In consequence of an impediment in his speech he made no pretensions to oratory, and rarely made an oral argument at the bar; but when he did address the court or jury, notwithstanding his disadvantages, so great was the confidence reposed in his judgment and sincerity that he never lacked the most interested attention, nor failed to make a favorable impression. His briefs were always clear, fair and logical, and while his patient research armed him with every available feature, he never sought an undue advantage. So fixed and prominent were these traits that Chief Justice Wheeler once said that the statements of the facts in his briefs were always so lucid and just he could rely upon them without reference to the record.

Candor and sincerity were the ruling traits of his character. He followed the guide of principle and never temporized with expedient; but while he possessed an adamant will, he was quick to recede from a position

which could not stand the test of reason and experience. These qualities would have rendered him an excellent judge. His decisions would have been strictly upon the merits of a case, regardless of the persons who might have been the parties to the contest. He considered the law as the common base of society, upon which every member should stand with a fair and equal footing; and its proper administration the most sacred function pertaining to human affairs. The deep indentations which its great principles had wrought in his mind met with reciprocal impressions upon his heart, and it was to him truly a "rule of action" in all the relations of life, which he delighted to enforce upon those who sought to violate its precepts or evade the dictates of justice. His accurate perception, acute analysis and superior judgment enabled him to eliminate from almost every medley of circumstance or contrariety of precedent the principles of truth and equity. He was thoroughly familiar with the laws of Texas, and with the elements and peculiar combination of its jurisprudence, which he knew in its origin and in all the phases of its development. This, with his unswerving integrity and known love of justice, invited confidence and patronage, and he was one of the most successful practitioners in the State.

His strong will and independent interpretation of the nature and import of events impelled him, while he was Provisional Governor, to advocate a policy obnoxious to a large majority of the Texan people. But it was not the dictate of partisanism, as charged by his opponents. He was as honest in his political convictions as in his legal opinions. It was an error arising from the novelty of circumstances, rather than from a capricious will or inimical design. He believed that the tenets and policy of the dominant party, emerging from the results of the civil war, were permanent and unalterable, and that the sooner and more effectually they were accepted and enforced, the sooner would peace and prosperity be re-established. But when, during the administration of Governor Davis, he saw the iniquities to which they might lead, he recoiled from

the partisan excesses of that executive and threw his great influence into the scale of conservatism.

In private and social life, Governor Pease was a model of propriety and gentility. He carried his best qualities into the circles of friendship and affection, and in all his dealings with his fellow-men not a breath of injustice or undue advantage marred the faith reposed in his personal integrity. His word was deemed a sufficient seal to any obligation, and no man was more readily and safely trusted. He was congenial, generous and kind-hearted, and his home was the seat of a genuine and flowing hospitality. He was married in 1850 to Miss L. C. Niles, of Windsor, Connecticut, and this accomplished and most excellent lady still maintains, at her elegant seat near Austin, the hospitality which, in his lifetime, welcomed his friends to his generous board.

In all the relations of life, he made the Golden Rule his motto. He was always satisfied with his own and coveted nothing belonging to his neighbors. He was a model husband, father and friend, and, above all, an honest man and a patriot. The record of his public services form some of the brightest pages of Texas history, and it would be difficult to find a Governor or statesman who has done more for the prosperity of his State and the happiness of his people.

The talisman of his success was a continued, strenuous and determined effort. He followed the polar star of duty, as seen through the glasses of conscious rectitude, and he was always true to the cause of virtue. It has been said that the bar instructs the bench no less than it is instructed by it, and, while Governor Pease never held a judicial office, his genius impressed itself upon Texas jurisprudence, and his name will ever be associated with the munificent and charitable polity which has become the pride and honor of the State.

In his message to the Legislature, on December 23, 1853, he said:—

“In recommending measures for your consideration, I shall mainly confine myself to a few of those important

and leading ones that seem to have been designated by public opinion for the action of the present Legislature, the early adoption of which will tend rapidly to develop the resources of the State, and to promote the happiness and prosperity of its citizens.

“Of these measures, one of the most important is, to make a suitable and permanent provision for the support of public schools. The highest and most sacred duty of a free government is, to provide the means for educating its citizens in a manner that will enable them to understand their duties and their obligations; this, too, is a measure that is enjoined upon the Legislature by the Constitution.

“The want of available means has heretofore furnished a ready excuse for the neglect of this duty. But this no longer exists. The State now has ample means at its command, and an opportunity is offered to establish a system of public schools that will extend its benefits to every child within its limits; if we fail to embrace it, we shall be faithless to our duties and the trust that has been reposed in us by our fellow-citizens.

“It is respectfully recommended, that two millions of dollars of the United States five per cent bonds, now in the treasury, shall be appropriated and set apart as a permanent fund for the support of public schools. That the income of this fund shall be annually apportioned to the several counties of the State, according to the number of free children in each between the ages of five and sixteen years, to be ascertained in such manner as may be considered most convenient; and that the amount due to each county shall be paid over to the county treasurer semi-annually, to be disbursed under the orders of the county courts, to such teachers as the parents or guardians of the children may choose to employ for their education.

“I do not pretend to recommend this as a perfect system; but its operation will be simple and cheap; it may be commenced without delay, and it seems to be better adapted to our situation than any other system that has come under my notice. A plan very similar to this has succeeded well in some of the neighboring States, where the population is

sparse, like our own. Time and experience will point out the defects of the system proposed, and enable us by future legislation to perfect and adapt it to the situation and wants of our population.

“I would also recommend that the amount which has already accumulated by the appropriation of the one-tenth of the annual revenue of the State derivable from taxation, be added to the principal of this fund, and that for the future, this tenth be apportioned in the same manner as the income of the fund.

“Under the present provisions of the Constitution, the lands that have been donated to the several counties for public schools can not be alienated in fee, nor disposed of otherwise than by lease, for a term not exceeding twenty years. In a State where land is so cheap as it is here, and where so large a quantity is in market, it can not be expected that under these provisions any benefit will be derived from these school lands during the present generation. Much of it is located in large bodies, in sections of the State where it would be improved if subject to sale. The policy of reserving from sale, and consequently from cultivation, such large bodies of land, may well be questioned, and I recommend to your consideration the propriety of an amendment to the Constitution, by which these lands may be alienated under the direction of the Legislature, upon the petition of a majority of the citizens of the county owning the lands.

“If such an amendment were adopted, these lands might be subdivided into small and convenient tracts, and each alternate tract might be sold upon a long credit, at not less than a minimum price; the purchaser to pay an interest of six per cent on the amount of his purchase, to be annually expended in the same manner as the school money distributed by the State. By adopting this policy, most of the counties would derive some immediate benefit from their school lands, and the alternate tracts reserved from sale would much more rapidly increase in value.

“The want of a good university in the State, where a liberal education can be obtained, is a serious inconve-

nience. It should be our policy to furnish, within our own limits all the means for obtaining an education, that can be had in any part of the Union, so as to remove the necessity of having to send our youth abroad to be educated among those who are hostile to the policy and institutions of the State.

“The present seems to be a favorable time to lay the foundation for such an institution, and I respectfully recommend that the sum of two hundred and fifty thousand dollars of the United States bonds now in the treasury, be appropriated and set apart as a perpetual fund, the interest of which shall be applied to the erection and support of a State University. The income of such a fund, with the amount that may hereafter be realized from the lands that have been set apart by an act of the late Republic, will, at no distant period, enable us to build up a university fully adequate to all the wants of our State. I am aware that these lands were appropriated for the establishment and endowment of two universities, but I suggest for your consideration, that it would be better to have one well endowed institution of the kind, than to apportion our funds for the erection of two, neither of which could afford the advantages which are furnished by similar institutions in other States of the Union.

“Should such an appropriation be made, it will be necessary to pass laws for the location of the proposed university at some central point, convenient to the entire State, as well as for the erection of the necessary buildings and for the organization and government of the institution.

“The establishment and endowment of an asylum for lunatics, and an institution for the education of the deaf and dumb, are measures that should commend themselves to your consideration. Our census tables show that we have in our midst many of both of these unfortunate classes, who have a claim upon our sympathy and bounty, and who now have to be sent away from their friends to distant parts of the Union, in order to obtain the means of alleviating and improving their condition.

“Institutions of this character can not be established in

a State so new as ours, except under the care and patronage of the government, and I recommend that the sum of five hundred thousand dollars of the United States bonds be appropriated and set apart as a perpetual fund, one-half for each of these institutions, the income of which shall be applied to their erection and support. Should you concur in this recommendation, you will of course pass the necessary laws for their location, establishment and government.

“These appropriations will absorb a large portion of the United States bonds now in the treasury, but the objects for which it is proposed to use them are of great practical utility, and will be productive of benefits as lasting as the institutions under which we live.

“The improvement of our navigable water-courses and the construction of railroads are measures of great interest to our citizens, and have deeply engaged public attention. Our past legislation has frequently been directed to these objects, but it has been productive of little if any benefit.

“The rejection, at the late election, of the river bill of the last session, can not be fairly considered as an expression of the people against the policy of attempting to improve our navigable rivers. That bill was defective in its details, and made insufficient appropriations for those streams that are susceptible of being improved, while it contained many appropriations for objects of questionable utility. It should be borne in mind that our large rivers have, without any improvement, hitherto furnished the means of transporting most of our productions to a market, and we must continue to rely upon them to a great extent for many years, even if the construction of railroads shall proceed as rapidly as is anticipated by their most sanguine friends. It is believed that a moderate expenditure of money by the government would greatly increase their usefulness and add largely to the value of the taxable property of the State. If such be the case, it certainly is an object worthy of your encouragement and patronage.

“The advantages to be derived to our State from the

construction of railroads, are too obvious to require demonstration; the necessity for them is felt and acknowledged by all, and it is a question of great interest to our citizens to devise and adopt some policy, by which we can secure their construction at the earliest period.

“The limitations imposed by the Constitution upon the power of the Legislature, preclude the State from undertaking these improvements or becoming a part owner of the stock of any corporation created for that purpose. The active capital in the hands of our own citizens is insufficient to secure their construction, but, for the attainment of this object, we may hold out sufficient inducements for the introduction of capital from abroad. It can not be disguised that the population and business of the State are not such, as at this time, to promise the return of an immediate profit on the amount that may be invested in such enterprises. Indeed, it may well be doubted whether a railroad in any section of the State would, for the next five years, pay an interest of five per cent on the amount invested, in addition to the cost of repairs and other expenses necessary to keep the road in operation. If, therefore, we would invite the employment of capital from abroad, in railroads in this State, we must hold out such inducements of ultimate profit as will compensate the holders of it, for the small interest they will receive during the first years of its investment. Fortunately, the large extent of our public domain will enable us to do this, without imposing any onerous burden on our citizens.

“I had intended on this occasion to present you my opinions in relation to the best mode of securing the passage across our State of the proposed railroad to the Pacific Ocean; but this is now rendered unnecessary by the bill which you have already passed to provide for the construction of the Mississippi and Pacific Railroad. While the principal provisions of this law are unobjectionable, I think it might have been improved in some of its details, particularly in that provision which authorizes the company to receive patents for the lands selected previous to the completion of the entire road.

“It is to be hoped that this law will accomplish for the State all that is anticipated by its friends.

“The duties and responsibilities imposed upon the Governor under the provisions of this law will be cheerfully undertaken, and I shall endeavor to execute them in a manner calculated to effect the objects intended by the Legislature.

“In adopting any general system for aiding other companies in the construction of railroads, we find ourselves embarrassed by the numerous charters that have heretofore been granted to individuals, without any specific designation of the routes they were to pursue, who still hold and rely on them, although not a dollar of capital stock has ever been paid. It is much to be regretted that instead of granting charters indiscriminately to all who applied, without any assurance that the applicants were possessed of the necessary means to comply with their provisions, the State did not first locate and survey such routes as the wants of commerce and the business of the country seemed to require, and then grant charters for these routes to companies who should organize after a subscription of stock, with an amount actually paid at the time of subscribing sufficient to show an intention of prosecuting the work in good faith. Had this course been pursued, our statute books would not have been incumbered with railroad charters, many of them commencing nearly at the same point, and conflicting with each other in the routes they propose to pursue, nearly all of which have expired, or are about to expire, without having accomplished anything beneficial to the public.

“In regard to such charters as have been heretofore granted, I respectfully recommend that no extension of time shall be granted to any company, unless satisfactory evidence is presented, that it has actually commenced the construction of its road, and that a sufficient amount of stock has been paid to give a reasonable certainty that the road will be completed. I would also suggest that in all such cases, the route and termination of the road shall be designated, when this has not been done in the original charter, and if any further donations of land are made to

such companies, they should receive the patents only on the final completion of their roads.

“In extending aid to future railroad enterprises, we ought to avoid the evils that have attended our past legislation on the subject.

“I would suggest that all charters hereafter granted to railroad companies, should specifically designate the route to be pursued as well as the commencement and termination of the road. That they should appoint commissioners to receive subscriptions for stock, a portion of which should be paid at the time of subscribing, and whenever a reasonable amount of stock has been subscribed on these terms, the stockholders should be permitted to hold an election and organize the company. That the charter should also limit the time within which the companies shall commence their roads, and prescribe the number of miles to be constructed from year to year, until their final completion. The State should grant bounties of land sufficient to induce capitalists to become stockholders in companies thus organized, the land to be selected from time to time, as the road progresses, but no title to be issued until the road shall be completed according to the terms of the charter. These companies should be required to alienate the lands thus acquired within a limited time after the completion of their roads. Should this course be adopted, the State would secure the construction of valuable works of internal improvement, before she parted with her lands, instead of being liable to have the works abandoned after those portions have been constructed which promise an immediate profit.

“I would also suggest that the alternate sections upon the line of the Mississippi and Pacific road be granted to other roads connecting this with our gulf ports, with the Vicksburg road and the New Orleans and Opelousas road at such points as will best accommodate the different sections of the State. Such a disposition of these sections is but just, since the portions of the State through which these branch roads are to be built, will receive no immediate

benefit from the Pacific road unless they are thus connected with it.

“In addition to the aid proposed to be extended to railroads in the manner heretofore indicated, I think it would be good policy to authorize the school fund, the university fund, and any other funds that may be set apart by the State for charitable and benevolent uses, to be loaned out, from time to time, to railroad companies, in this State, as they may progress with the construction of their roads. I entertain no doubt in relation to the power of the Legislature to make this disposition of these funds. The period is not very remote when the United States bonds will be redeemable, and necessity will then force us, if we would derive an income from their proceeds, to make some investment of them. If they can be securely loaned out, so as to be used in the prosecution of works of improvement calculated to develop the resources of the State, and contribute to the wealth and convenience of our citizens, it is our duty to make this disposition of them.

“Should these views meet with your approbation, I recommend that a Board of Commissioners be established, to consist of Controller, Treasurer and Secretary of State, who shall be authorized, with the concurrence of the Governor, to loan these funds at six per cent interest per annum, payable semi-annually, for a period not exceeding twenty years, to companies chartered by this State, for the construction of railroads and other works of internal improvement. The amount loaned to any company in no case to exceed the one-third of the actual cost of the works that have been constructed, and to be well secured by a lien on the property of the company, subject to be enforced without a suit, by a sale after sixty days' public notice.

“The condition of the Indian tribes within the limits of our State calls for some action on the part of the Legislature. Our situation in relation to this class of population is different from that of any of the other frontier States of the Union. In these the General Government has the sole and exclusive control of the public domain over

which the Indians formerly roamed, and under the power given by the Constitution to Congress to regulate commerce with the Indian tribes, that department has assigned to them certain limits which they are to occupy, and regulates all intercourse between them and the whites, and also between the different tribes. Under this policy, Indian depredations have ceased for many years. The General Government has the same power to regulate intercourse with the tribes within our limits, but it can not be efficiently exercised, because having no right in the public domain, it can not set apart any particular district for their occupation, and without this their movements can not be controlled. I respectfully suggest that a portion of our vacant domain, remote from the settled parts of the State, shall be appropriated for the temporary occupation of those remnants of tribes that properly belong to this State; that all locations within the limits thereof be prohibited, and that a qualified jurisdiction for Indian purposes be ceded to the General Government for a term of years, provided she will engage to remove them within those limits and keep them there, subject to her laws regulating intercourse with the Indian tribes.

“The business before the Supreme Court is increasing so rapidly that it will soon be impossible, with the present number of judges, to dispose of the docket during each term; indeed, the number of cases now taken to that court is so great that many important ones are continued over from term to term for want of sufficient time to give them that thorough investigation which the vast interests involved require at the hands of the judges. Much of their time is consumed in preparing the written opinions which they are required to give in each case. By increasing the number of judges, this labor will be divided, and more time given to the examination and decision of causes. I therefore recommend an amendment to the Constitution, so as to give the Legislature the power to increase the number of judges to five. Should you concur in this recommendation, I suggest that you, at the same time, propose an amendment, giving to the Governor power to fill all vacancies that may

occur in the Supreme and District Courts, and in the offices of Attorney-General, District-Attorney, Controller, Treasurer and Commissioner of the General Land Office, by appointment, to continue in force until the vacancy can be filled by the people at the next regular election for State or county officers. Under the present provisions of the Constitution, should any of these officers die or resign, the office must continue vacant until an election can be held, which will take several months. Such an amendment would obviate the necessity that now exists for frequent elections at different periods in the year, and subserve the public interest by having these offices temporarily filled, immediately on the happening of a vacancy.

“In connection with this subject, I feel it my duty to call your attention to the inadequate salaries now paid to the judges of both the Supreme and District Courts. The duties of these offices are very laborious, and they should be filled only by men of stern integrity, and of superior legal attainments. It would seem needless to argue that, in order to secure men of qualifications adequate to the important and laborious duties which they have to perform, a just compensation should be paid for their services. It must be obvious to all, that the present incumbents of these offices have never received salaries commensurate with their labors and merits. I trust that this subject will not fail to receive your early attention and efficient action.

“Your attention is invited to the law regulating appeals to the Supreme Court in criminal cases, under the provisions of which, in all cases, not capital, the prisoner, after conviction, by taking an appeal, is permitted to be released on bail. For several offenses persons may be confined to hard labor in the penitentiary for fifteen years; for others they may be confined in like manner for life; still, by this law, they, by taking an appeal, are entitled to bail after they have been convicted by a jury, and thus in all cases, except treason, and murder in the first degree, convicts have it in their power to purchase exemption from the penalties of our criminal laws. It is hoped that this evil will be remedied without delay.

“ It is believed that an examination of our criminal laws will show, that there are some offenses for which free persons may be subjected to the barbarous punishment of whipping. These provisions are inconsistent with the general spirit of our criminal laws, and ought not longer to be retained.

“ Our laws, both civil and criminal, in my judgment, require a careful revision. We have adopted, it is true, the best portions of two different systems, but this was not done at the same time, and it was usually effected by crude and hasty legislation; as a necessary consequence, these different parts have never been brought to combine into one harmonious system. Our rules of pleading and of practice in the courts are meagre and exceedingly defective. Our statutes concerning crimes and punishments were often passed without reflection, many of their provisions conflict with each other, and these, more than any other portions of our laws, require to be carefully revised and amended. These are defects which hasty legislation can not cure.

“ I would recommend that you make a suitable provision for the appointment of a commission of three gentlemen learned in the law, whose duty it shall be to prepare a code of civil and one of criminal procedure; and also a code of general laws or rules of decision, and that all these be reported for the action of the next Legislature.

“ Should this be done with ability and care, our system of procedure might be better adapted to the attainment of the ends of justice than any other which has been devised, and the whole of the rules and principles of the general laws, which are now diffused in an almost endless number of text books and reports, could then be contained in a single volume. This would be accessible to all, and should be adopted, as near as possible, to every comprehension.

“ For the reasons mentioned above, it is evident that there is a stronger necessity for a revision and modification of our laws than those of any other State in the Union. Besides, we should receive aid from the lights furnished by the successful experiments of several of our sister States. I feel entire confidence in recommending this measure to

your attention as one calculated to be productive of vast advantage to the State.

“Our territory is so extensive and so sparsely settled that but little is yet known of its agricultural and mineral capacities. This must continue to be the case, if we wait for the slow process of settlement to develop them. It is believed that an accurate and scientific geological survey of the State will disclose sources of wealth and prosperity that would otherwise remain unknown for years; besides giving an accurate knowledge of our mineral wealth and its localities, it will doubtless show the capacity of our soil for the production of many profitable articles for export, the cultivation of which is now entirely neglected. By diffusing this information abroad, we shall make known the great inducements that our State offers to emigrants, and insure a large increase of population. I recommend this measure to your serious consideration.

“I think it important that provision should be made for running and marking the boundary between Texas and the territories of the United States, from the point where it leaves Red River to where it intersects the Rio Grande. This duty might be imposed upon those who are selected to make the geological survey, without incurring much additional expense. The execution of any law that may be passed on this subject would, of course, be dependent upon a law being passed by the Congress of the United States for the appointment of commissioners on her part to join in the work. It is believed that our Senators and Representatives in Congress would have no difficulty in procuring the passage of such a law, if the initiatory step be taken on our part.

“The penitentiary, as at present conducted, is a heavy expense to the State. It is believed that if the buildings were completed and enclosed with a wall, according to the original plan, and suitable workshops erected, the labor of the convicts might be let out to the highest bidder, for a term of years, for an amount more than sufficient to reimburse the expense of their maintenance. Under such an arrangement, the contractors should be required to em-

ploy the convicts either in manufacturing, or at such trades as would be least calculated to interfere with the mechanical industry of the State. It is hoped that this subject will receive that attention from you which its importance demands.

“The laws granting pre-emption rights to actual settlers upon the public domain are somewhat obscure and conflicting in their provisions. I think it advisable that they be revised and so changed as to grant to each settler only two hundred acres of land. This is the quantity protected by the Constitution, as a homestead to each head of a family, and is sufficient for farming purposes.

“In connection with this subject, I call your attention to the law in relation to the right of aliens to hold lands. We are daily receiving large accessions to our population, by immigration from foreign countries. The first wish of these immigrants, on their arrival here, is to secure a home and an interest in the soil; but they are now denied this privilege until they have resided here five years — the period required for their naturalization. In many of the States of the Union, laws have been passed authorizing aliens to hold lands immediately on their arrival, provided they make a declaration under oath of their intention to become citizens. Some of them have gone so far as to incorporate a provision in their Constitution, giving to aliens all the rights of citizens of the State at a period much earlier than they can be obtained under the naturalization laws of the United States. This policy has secured to these States a large portion of the foreign immigration for the last few years, and has added much to their productions and wealth. If the same liberal policy were here adopted, similar advantages could not fail to result to our State.

“The State has heretofore made ample provision for a just and equitable settlement and payment of our revolutionary debt, and a portion of our creditors have acceded to the settlement of their claims, and received payment therefor; others refuse to acknowledge the right of the State to ascertain and fix the amount of her indebtedness to them, and insist upon receiving the face value of their

claims, although they were issued by the government at rates varying from twenty to seventy cents on the dollar. In consequence of this refusal, five millions of the five per cent stock that were to have been issued under the provisions of the act of Congress, approved the 9th day of September, 1850, proposing to the State of Texas the establishment of her northern and western boundaries, etc., are still unavailable to the State. A reasonable time has already been allowed for these creditors to accept of the terms proposed, and receive payment of the amount due them. I therefore respectfully suggest that a law shall be passed designating a time within which all holders of recognized claims against the State of Texas shall present them to the Treasurer, accompanied with releases of all claim against the United States for or on account thereof, in the form that has been prescribed by the Secretary of the Treasury, and approved by the President of the United States, or that such claims shall be forever barred and the holders no longer recognized as creditors.

“The late period of your session at which I have an opportunity to make this communication, reminds me of the inappropriate time that the Governor enters upon the discharge of his duties. While the Legislature and the Governor are elected at the same time, about seven weeks intervene between the commencement of the labors of these different departments of government. It is believed that if they entered upon their duties simultaneously, the sessions of the Legislature would be less protracted, and a large amount of expenditure saved to the State. I therefore recommend that the Constitution be so altered as to require the Governor to be installed at the commencement of the regular sessions of the Legislature.

“Many other subjects of legislation, both of general and local interest, which have not here been noticed, will doubtless suggest themselves to you.

“The situation of Texas at this time demands practical legislation.

“I trust that all sectional feelings and prejudices will be discarded from your councils, and that every measure will

be examined and acted upon solely with reference to its merits, and the effect it may have upon the interest of the State at large.

“Our present condition is a most prosperous one, immigration and wealth are pouring into the State more rapidly than at any former period. A spirit of enterprise and improvement is now abroad among our people, which, if judiciously fostered and encouraged, will at no distant period enable Texas to occupy that position among her sister States to which she is entitled from her extent of territory and great natural resources.

“It is my sincere desire that you may be able hereafter to reflect that your labors have contributed much to elevate the moral, social and political condition of the State.”

In his message to the Legislature in 1855, he said:—

“I invite your attention to the importance of establishing a State University, which shall afford to our youth all those opportunities for obtaining a liberal education that are to be found in any part of the Union. We can not appreciate too highly the advantages of educating our children within the reach of parental authority, where they can daily witness the practical operation of our Government, its institutions and laws, and become familiar with the habits and sympathies of the people with whom they are to associate in after life.

“To secure these advantages is worthy of an effort on the part of the State, and I recommend that the sum of three hundred thousand dollars of the United States bonds now in our treasury, be appropriated as a permanent fund to be increased by the proceeds of the gradual sale of the University lands, at not less than a minimum price, after they shall have been subdivided into small tracts, and that the income of this fund be applied to the erection and support of such an institution.

“This will enable us within a few years to erect the necessary buildings, employ professors in every branch of literature and science, and place the institution on a sure basis for future prosperity and usefulness.

“I also call your attention to the necessity of establishing

an Asylum for Lunatics. If we had such an institution in our midst, where those who are afflicted with insanity could be promptly placed under the care of persons skilled in its causes and treatment, a large portion of those unfortunate persons might be restored to reason, and the condition of all greatly alleviated.

“We also need an institution for the education of the deaf, dumb and blind, where these unfortunate classes may be taught their duties and responsibilities as citizens, and made useful members of society.

“Institutions of this character are necessary in every community, but they can not be founded and supported without the care and patronage of the State.

“I therefore recommend that two hundred and fifty thousand dollars of the United States bonds, now in our treasury, be appropriated as a permanent fund for the erection and support of a lunatic asylum, and a like amount as a permanent fund for an institution for the education of the deaf and dumb and blind, and that provision be made for the erection of these institutions as soon as the income of these funds will permit.

“If we could create and encourage among our citizens a spirit of independence and attachment for their own State, we ought to furnish them at home with all those facilities for improving and ameliorating their mental, social and physical condition, which are to be found in other parts of the world. We now have the means of doing this without imposing onerous burden upon our citizens, and if we neglect to avail ourselves of this opportunity, we shall be justly charged with being unmindful of the high duties and responsibilities that rest upon us.

“In compliance with the provisions of ‘An Act to provide for the construction of the Mississippi and Pacific Railroad,’ approved the 21st of December, 1853, proposals for its construction were, in the first instance, invited, until the 1st of May, 1854, but before the arrival of that period, it became apparent that the time allowed for receiving proposals was too short, and it was extended to the 1st of August of the same year.

“On the day to which the time had been extended, the propositions were opened, and it was ascertained that but one had been received which came within the provisions of the law. This was accepted, and on the 31st of August a contract was concluded for the construction of the road.

“The contractors subsequently failed to make such a deposit as the law required, and the contract was declared to be null and void.

“Upon the failure of this contract, proposals were again invited, but none have been received.

“Some of the contractors contended, for a time, that the deposit offered was a good one, and that they were entitled to the contract. But assurances have been received from those contractors, who are citizens of Texas, which includes all of them but two, that the company has never been organized, and that they consider the contract forfeited, so that the whole subject is still within the control of the State.

“It is a matter for your consideration whether this law shall be continued in force.

“The great advantages that would accrue to Texas from this road, makes it a subject of deep interest to all classes of our citizens, and should induce all to favor the measure if a reasonable hope is entertained that it will be constructed under the law.

“As a part of a great national highway from the Mississippi River to the Pacific Ocean, it is probable that the liberal grant of land offered by this law, would secure its construction, provided similar inducements were offered for the construction of a road from the Mississippi River to its point of commencement, and also for its continuation from El Paso to the Pacific Ocean. But as a mere local road from the eastern line of the State to El Paso it would not prove to be a profitable work, during the present generation.

“As far west as the Colorado River this road would pass through a region that would, in a few years furnish sufficient transportation and travel to make it a paying road, but until a road shall have been constructed from the

Mississippi River to its point of commencement, the uncertainty and expense that would attend the transportation of the iron and other materials to its point of commencement would be so great as to deter any company from undertaking even this part of it.

“It is possible that a company may be found who will undertake the construction of this portion, provided they are allowed to construct a road upon the same terms from the head of permanent navigation on the waters of some of our bays, up to the line upon which it is proposed that the Pacific road shall run, and then east to the eastern line of the State, and west to the Colorado River.

“This change would make an immense saving in the cost for the transportation of materials, for they could be brought to the point of commencement with the same facility that they could be carried to the Mississippi River, and from thence they could be transported over the road as it progresses, at an inconsiderable cost.

“It will be found, however, that it can not be constructed at the rate of one hundred miles for each year; few if any roads in the United States have been constructed at the rate of fifty miles a year, and it will severely tax the energies of any company, whatever may be its resources, to construct a road at that rate.

“These reflections will suggest themselves to every one who takes a practical view of the subject, and should be considered by you in determining your action in regard to it.

“The present is a favorable time to revise our legislation in regard to railroads generally.

“We have chartered thirty-seven railroad companies, and have held out greater inducements for their construction than were ever before offered by any government.

“It is now nearly four years since a bonus of eight sections of land was offered for each mile of railroad constructed, and nearly two years since the bonus was increased to sixteen sections a mile for each twenty-five miles.

“The result of these efforts has been, that we have one road of about thirty miles in operation, from Harrisburg on

Buffalo Bayou to the neighborhood of Richmond on the Brazos River, and two others, "The Galveston and Red River Railway," and "The Galveston, Houston and Henderson Railroad," in the course of construction, with a reasonable prospect, as I am informed, of completing twenty-five miles each by the 30th of January next, in time to avail themselves of the bonus of sixteen sections.

"So far as I have been able to learn, no other company is now doing any work under its charter.

"I do not think it advisable to renew any of the charters heretofore granted, or to give relief to any company organized under them, unless such company is now actually at work upon its road, and can show that it has expended a considerable amount of money thereon, and has the ability within a very short period, to complete the number of miles necessary to entitle it to land under the laws now in force.

"No new charter should be granted over a route where a road is already being constructed, or so near such route as materially to impair its value.

"Every railroad company should be required to hold all meetings, for the election of its officers, within the State, and to have a majority of its directors resident citizens thereof, and also to keep its principal office for the management of its affairs within the State.

"By adhering to these rules we shall correct many of the errors that have attended our past legislation on the subject.

"I am unwilling that any new charters shall be granted to individuals for their own benefit. If new charters are necessary, let such routes be selected as the wants and business of the country require; designate their points of commencement and termination, and grant charters to commissioners who should be required to open books for the subscription of stock, after giving public notice. No subscription should be received unless five per cent thereof is paid at the time of subscribing, and whenever the percentage on the capital stock subscribed shall amount to one hundred thousand dollars, let the commissioners be authorized to call a meeting of the subscribers and hold an election for officers;

after which the subscribers should become a corporation with all such powers as are set forth in the charter. The commissioners should have no right under the charter, except as trustees, for the benefit of the subscribers when they organize and become a corporation, and should be liable to a heavy penalty for receiving subscriptions of stock without the payment of five per cent thereof in cash. The corporation thus organized should have authority from time to time to receive further subscriptions to its capital stock, to the full amount thereof, after giving public notice, the subscribers in all cases paying five per cent of their stock at the time of subscribing.

“If we pursue this course, our railroad charters will cease to be offered for sale by individuals who have obtained them for purposes of speculation. Those who wish to construct railroads will obtain charters without paying a premium to the persons who have induced the Legislature to pass them, and we shall have no more companies organized without capital to impose on the credulous and unwary, and stand in the way of those who have the disposition and means to construct railroads.

“While so little has been accomplished under the policy heretofore pursued by the State for the encouragement of railroads, it becomes us to consider well what we may reasonably expect to be done hereafter by a continuance of this policy.

“The Buffalo Bayou, Brazos and Colorado Railroad Company will undoubtedly complete its road as far as Richmond during the present year. The Galveston and Red River Railway Company, and the Galveston, Houston and Henderson Railroad Company expect to complete twenty-five miles of their respective roads by the 30th of January, 1856, so as to secure the bonus of sixteen sections to the mile.

“These companies will then have to continue their roads at the rate of twenty-five miles a year or lose the benefit of the bonus of sixteen sections. If they fail to do this, the Harrisburg company and the Henderson company may still have the benefit of the bonus of eight sections, but the

latter to secure even this, will have to construct an additional fifteen miles on or before the 1st of March, 1857, to save its charter.

“The Houston company has already lost the benefit of the bonus of eight sections by failing to complete ten miles of its road within the time prescribed by its charter.

“It is possible that some of the other companies may be able to avail themselves of the sixteen section bonus, as only those which terminate on the Gulf coast, the bays thereof, or on Buffalo Bayou, are subject to the provision which requires the construction of twenty-five miles on or before the 30th day of January, 1856, though it is believed that few, if any of them, will ever build road enough to save their charters.

“It is not generally supposed that either of the three companies before named will be able to construct their roads at the rate of twenty-five miles a year after the 30th of January next, so as to secure the sixteen section bonus, unless they are assisted by a liberal loan of money from the State. We can not, therefore, expect that much progress will be made for many years to come in the construction of railroads in this State by private corporations, beyond the completion of those tracks already graded, unless such a loan shall be authorized, or that provision of the act donating lands to railroads, which requires these companies to construct twenty-five miles a year, is repealed, for it is generally conceded that they will not, at present, yield a sufficient profit to induce individuals to invest capital in them, without the advantages to be derived from the land bonus.

“The passage of a law, similar to that attempted at your last session, authorizing the loan of eight thousand dollars a mile, might enable these three companies, if they were to have the sole benefit of it, to extend their roads about seventy-five miles in the next three years; this, it is true, would afford great relief to those sections of the State accessible to them, but it would be those sections that are least in need of railroad facilities, for they are already nearest to a market, and would leave the greater part of the State, which

is now suffering for want of such facilities, in the same destitute situation it now is, without any certain prospect of being supplied.

“What our citizens need is a general system of internal improvements by railroads, river improvement and canals, that will extend its benefits to every section of the State as near as practicable, and give them a cheap transportation of their productions to a market.”

In 1872, Attorney-General Alexander gave to A. Bledsoe, the Controller, his opinion that the act to incorporate the International Railroad Company and to provide for the aid of the State in its construction, was a special or private act, and that the Secretary of State viewing it in this light had caused it to be printed in the volume of special laws, and that, therefore, the State Treasurer could not lawfully sign the bonds which the Legislature had authorized to be issued in favor of the railroad company.

At the request of Mr. Honey, the State Treasurer, and the railroad authorities, Gov. Pease expressed his written opinion in regard to the matter; which he rendered in a letter to the Treasurer in April, 1872. In this opinion he took the grounds that the character of an act of the Legislature must be determined by the general principles of the law which define what are public and what are private statutes; that this can not sometimes be easily determined, from the fact that statutes often relate to matters which partake of both a public and private character. The definition rendered by the most precise writers is that public statutes relate to the State, or to the people in their corporate capacity, and private statutes concern only the interest or benefit of certain individuals or particular classes of men.

Statutes are generally intended to be public, and a private statute is an exception to the rule. According to these principles the act in question should be considered a public statute. This is indicated both by its title and purpose, which relate both to the State and the people at large. The act grants bonds of the State to the railroad company and requires that they shall be signed by the Governor and

Treasurer, and countersigned and registered by the Controller, and to be then delivered by the Governor to the proper officer of the company, whenever it should be proven, as provided by the act, that the company had complied with certain conditions. That the Controller should then cause a tax to be assessed upon all taxable property in the State, and upon all occupations, proportioned to the taxes levied by general law for a sum sufficient to pay the interest on the bonds.

Gov. Pease contended that these explicit provisions clearly created a debt against the State, and provided for its payment by taxation in the manner provided by the Constitution; that it is the presumption of law that all statutes enacted by the Legislature are constitutional, and that, therefore, it is the duty of the officers of the State to carry their provisions into effect until they are declared unconstitutional by a competent judicial tribunal, unless they are enjoined from doing so by competent authority. Otherwise, if any officer of the State could refuse to carry out the provisions of the law which did not conform to his ideas of the Constitution the worst confusion and anarchy would be the result.

That writers on constitutional law in commenting on provisions, similar to that in the Texas Constitution, which declares that "every law enacted by the Legislature shall embrace but one object, and that shall be expressed in its title," assert that this clause is not designed to embarrass legislation by multiplying the number of bills, but is intended to put an end to vicious legislation and to require that in every case the proposed measure shall stand upon its own merits.

The Supreme Court of Texas (20 Texas Rep. 782) has held that this section doubtless was to prevent embracing in an act, having one ostensible object, provisions having no relevancy to that object, but really designed to effectuate other and wholly different objects, and thus to conceal and disguise the real object proposed by the provisions of an act under a false and deceptive title.

That the object of the act in question was clearly expressed in its title and the purpose for which the aid was given was also clearly defined, and there was no good reason to suppose that a court would ever decide the act to be unconstitutional.

That, however, much an officer of the State may be opposed to the provisions of an act or its policy, he is not thus justified in refusing to carry it into execution.

This hesitancy on the part of the Controller to sign these bonds gave rise to the *mandamus* case of Bledsoe, Controller, *v.* The International Railroad Company, reported in 40 Texas, in which the court held that a writ of *mandamus* did not lie against an executive officer of the State government; but this opinion was overruled by Chief Justice Moore in *Kuechler v. Wright*, decided at the same term.

JAMES W. DALLAM.

James Wilmer Dallam was born in the city of Baltimore, Maryland, on the 24th of September, 1818. His father, Francis J. Dallam, a highly respected citizen of that city, was for many years cashier of the Baltimore Bank. His mother was a Miss Wilmer, the daughter of an Episcopal clergyman. James Wilmer, the eldest son, while a boy, remained at home under the supervision of his parents, and went through the regular course of what is usually denominated a home education.

His father wishing to give him the advantage of a college course, sent him to Brown University, at Providence, Rhode Island. After finishing his university course he returned to Baltimore, and studied law under that able and distinguished lawyer and advocate, Hon. Reverdy Johnson, who was afterwards Attorney-General of the United States.

Mr. Dallam was but little more than twenty-one years of age when he obtained license to practice his profession. Being unwilling to wait the usual period for a young lawyer to obtain a practice in Baltimore, where the bar was literally crowded by so many able and established lawyers, young Dallam determined to emigrate to Texas to seek his fortune, and chose the little town of Matagorda as his future home. Here he remained attending to the business of his profession for four years.

Finding that there was but little litigation in the courts at that early period, he passed the winter of 1844 in the small town of Washington, then the temporary capital of the Republic, and while there employed himself in compiling the book, which he soon after published under the title of "Dallam's Digest."

In the spring of 1845 Mr. Dallam went back to Baltimore,

and, with the assistance of his father, succeeded in publishing his book. This work was prepared by Mr. Dallam under great disadvantages. But few briefs had been filed by the attorneys in the cases which had been decided by the Supreme Court of Texas, and the consequence was that the digest was necessarily imperfect. However, to Mr. Dallam must be attributed the merit of being the only lawyer in the Republic who conceived the idea of the enterprise.

When the book appeared it contained, among other things, the decisions of the Supreme Court made during the five preceding years, which had not before been published. It was eagerly purchased by the lawyers of the Republic, and was soon regarded by them as almost indispensable in the practice of their profession.

In the fall of 1845, Mr. Dallam returned to Matagorda, and on the first day of October of that year was married to Miss Annie P. Fisher, the daughter of Hon. S. Rhoads Fisher, who was one of the early settlers of Texas, was a strong advocate for separation from Mexico, and was afterward Secretary of the Navy of the Republic of Texas.

As there was little to be done in the practice of his profession, Mr. Dallam, soon after his marriage, edited a newspaper in the town of Matagorda.

In the year 1847 he was engaged by some influential parties in Indianola, Texas, to edit a newspaper in that place in both German and English. In the early part of the month of August of that year (1847) he went to New Orleans to make necessary business arrangements for establishing and conducting his paper. At the time of making this visit, he was entirely unaware that yellow fever had already made its appearance in that city. Within less than a week from the time of his arrival there, he was attacked by the prevailing epidemic, which in his case terminated fatally in three days.

Thus ended the life of one whose youth gave promise of future usefulness.

Mr. Dallam's death occurred on the 20th of August, 1847, when he was not quite twenty-nine years of age. He had been married only two years, and left but one child.

an infant daughter, Annie Wilmer Dallam, who is now the wife of Branch T. Masterson, Esq., a much esteemed and prominent lawyer of Galveston, Texas.

Mr. Dallam was a gentleman of varied and extensive reading, of much information and of fine literary taste. He was possessed, too, of untiring industry and perseverance, and having studied under the tuition of that great lawyer, Hon. Reverdy Johnson, he was well versed in the principles of his profession.

Possessing in a high degree the qualities of wit and humor, he was the life of the social circle in which he moved; and, being of a particularly kind and genial disposition he had many friends, and his early and untimely death was much regretted by all who knew him.

WILLIAMSON S. OLDHAM.

The subject of this sketch was born in Franklin County, Tennessee, on the 19th of June, 1813, and was a descendant of an old Virginia family, which emigrated from England and settled in that State during its colonial period. His father was an honest farmer of slender means, and, having a large family of children, was unable to give his sons even the advantages afforded by the common schools of the neighborhood. But during the intermissions of his duties and labors of the farm, and at night, young Oldham applied himself to the task of obtaining an education by his own exertions. He felt the inspirations of genius and ambition, and made such progress in his course of self-instruction that at the age of eighteen years he opened a school in the mountains of Tennessee, in order to procure means to continue his education and prepare himself for the bar. Having followed this calling two years, during which he availed himself of every leisure moment for his own advancement, he obtained a situation in the office of the district clerk of Franklin County. While serving in this capacity, his energy, sprightliness and aspirations attracted the attention of Judge Nathan Green, afterwards Chief Justice of Tennessee, who kindly directed his study of the law. He brought to the bar the eager determination and assiduity which had characterized his youthful exertions, and so apt was his comprehension of legal principles and so ardent his ambition, that Judge Green, on signing his license, predicted for him a bright career in his chosen profession.

In 1836 he removed to Fayetteville, Arkansas, where he formed a copartnership with S. G. Sneed, who was afterwards a prominent lawyer of Austin, Texas. At Fayette-

ville Mr. Oldham soon established an eminent reputation, and in 1842 was speaker of the Arkansas House of Representatives. His profound knowledge of law, his talents and application, his great success at the bar, and his personal popularity, placed him in the line of the highest judicial distinction, and in 1844 he was chosen almost unanimously by the Legislature an associate justice of the Supreme Court of Arkansas, and held that position until the fall of 1848, when, in consequence of ill health, he resigned, in contemplation of making his future home in Texas. His decisions settled many important questions in the jurisprudence of Arkansas, and are noted for their logical clearness, legal erudition, and for their wise application and development of legal principles. They are contained in the first three volumes of English's Arkansas Reports. *

In the spring of 1849 he removed to Texas and located at Austin, where he resumed the practice of law in copartnership with James Webb, and took his place among the most eminent lawyers of the Texas bar. He was afterwards associated with William Murphy, a distinguished criminal lawyer of Alabama, who resided a short time in Austin, and subsequently with John F. Marshall and A. W. Terrill, also with George W. White, now of Nashville, Tennessee, and lastly with B. H. Davis, now of El Paso, Texas. While he was in copartnership with George W. White, in 1858, the Legislature of Texas passed an act authorizing the Governor to receive proposals for the preparation of a digest of all the general statute laws of the State, and all the repealed laws of the Republic and State, through or under which any rights had accrued; also the colonization laws of Mexico, and of the State of Coahuila and Texas, in force at the declaration of Texas independence, and appropriated twenty thousand dollars for the purchase of five thousand copies of the work for the use of the State. The contract for preparing this digest was awarded to Messrs. Oldham and White, and the work prepared by them will always hold a prominent place in the jurisprudence of the State.

In 1861 Judge Oldham was strongly in favor of secession

as the proper and only practical remedy for allaying the fears and dangers which the people of the South generally entertained and apprehended for their institutions under the hostile policy and administration of the Federal government, and was an active member of the convention of that year, which severed the connection of Texas with the Union. He was chosen a member of the Provisional Congress at Montgomery, and was subsequently elected a Senator in the Congress of the Confederate States and held that position until the close of the war.

Throughout all the vicissitudes of the civil strife Judge Oldham was faithful and true to the cause which he had espoused with the pledge of his life, honor, liberty and property in its support. He never faltered in the advocacy of his principles, and repelled every sentiment of despair as to the result of the issue. During the last session of the Confederate Congress he was appointed one of a committee of three Senators to ascertain the remaining resources of the South and its chances for final success, compared with the power of the enemy for subjugation. He concurred fully in the views presented in the report of Senator Hill, of Georgia, that with a proper marshaling of its strength, an economical management of its resources, and with proper military skill and efficiency, the South could continue the war indefinitely, and until the North grew weary of the struggle.

In November, 1864, the Legislature of Texas passed a series of resolutions concerning "peace, reconstruction and independence," in which it was declared that the State of Texas would accept no offer of peace on any terms which did not come through the agency of the Confederate government; that the Southern States did not secede from the Union upon any question such as the mere preservation of the slave property of its citizens, but that, being free and sovereign States, they were resolved to preserve their freedom and their sovereignty; that even if the horrors of war could be obliterated, the experience of Texas as a member of the Union, in which she had seen every feature of the constitutional compact violated, warned her against any reunion

with the people of the North ; that while Texas earnestly desired peace, it must be coupled with the independence of the South, and that it would regard any overture of the Federal government made to an individual State, looking to its return to the Union, as an insidious policy to divide and conquer."

Judge Oldham introduced these resolutions in the Confederate Senate, in January, 1865, and, after discussing their merits and bearing, said : —

"Mr. President, we must avoid these consequences — we must keep our people united in their determination to be free. We must do nothing, by act or omission, that will divide them, or that will weaken their resolution never to submit to their enemies. I know of no better mode of accomplishing this than by keeping constantly and prominently before their minds the issue so clearly made up between us and our enemies. If ever a people upon earth had evidence to convince them of a fact, we have the evidence to convince us, beyond all doubt, that the government of the United States will not treat with us except upon the basis of submission, or reunion, which amounts to the same thing. Never was an issue more clearly or distinctly made up. We fight for independence; they fight for subjugation.

"They have shown no signs of yielding,—we can not yield; to do so is certain destruction. We staked our all upon the issue, and if we fail, all is lost. We must fight still longer. We must fight for peace, and continue to fight as the only alternative left us. We must prove by our arms what we never can do by argument or negotiation, that our enemy can not conquer us. Until we shall do that, we can never obtain any peace but that of subjugation. Then let us cease all contention and drive away all unmanly despondency, and go to work to arouse the energies and revive the spirit of resistance and enthusiasm of the people. If unwise counsels have prevailed, we but weaken ourselves by quarreling about it now; if errors have been committed in the field, we can not repair them by warring upon those who committed them; if we have met with disaster and

defeat, we can not rise above them by unmanly discontent and dispondency.

“Our safety in this struggle depends upon the harmonious and faithful union of the States of the Confederacy. We should avoid everything that tends in the slightest degree to disintegration. I believe that we can keep them united, and bring to the support of the country all the strength and energy of the people only by adhering to the Constitution in letter and spirit, which all have agreed to as the bond of union. Discard that instrument, either in regard to the agencies created by it, or the powers conferred, and you will open the floodgates of discord and anarchy, of division and conflict.

“I do not, in the slightest degree, call in question the patriotism of those who favor and advocate other diplomatic agencies than those provided by the Constitution. I know that they sincerely believe that by such means we will strengthen our cause at the North, and so far promote the ends of peace, and I as sincerely believe that at this time they will weaken our cause both there and at home, and thereby prolong the war and intensify its barbarism. There is but one mode of strengthening our cause with the people of the North, and that is to convince those who are opposed to our independence that we will never accept peace without it. The greater the disaster, the darker the hour, the more firmly and stubbornly should we assert that resolve; the more determined and defiant should be our tone; the more energetically should we set to work to gather up our strength for the renewal of the combat. The clear, cheerful, ringing tone of confident defiance that we are determined ‘to die freemen rather than live slaves,’ sent out from the two Houses of this Congress would cheer the hearts of our people; would renew the courage, revive the energies, confirm the endurance and nerve the arms of our brave and gallant soldier boys in the army, who for nearly four years have patriotically endured and heroically battled for our cause. They would repeat the shout from rank to rank, from regiment to regiment, from brigade to brigade, from division to division, from corps to corps and from army to

army. It would be caught up by the old gray-haired fathers and mothers at home, by our sisters, wives and daughters, and even by the little children, until its echoes would be heard from valley to mountain and from mountain to valley, and would reverberate from one end of the Confederacy to the other. Then indeed would we strengthen the peace party at the North, by showing that we are not to be overcome by disaster nor dismayed by defeat, or that we can be induced to abate one iota of our just demands by reason of them; and by convincing our enemies that we can not be subjugated by them. Thus our fathers in the Revolution of 1776, strengthened the peace party of Great Britain by refusing to negotiate while an invading army was upon their soil, and by convincing the monarch and the minority that subjugation was impossible. Let not the lesson of wisdom taught us by that example be lost to us. We may make up our minds that our enemies will never grant us peace with independence, as long as they believe from any cause they can conquer us; and whenever that delusion is dispelled, peace will follow as naturally as day follows the night. The night may be dark, but the day of our deliverance will come if we but remain true to ourselves. It may be nearer than we imagine; but whether it is or not, it will be all the brighter by reason of the darkness that precedes the dawn."

On another occasion he said: "I may be regarded as over sanguine; if it is so, it is because of my temperament, strengthened by my habits of life. From my earliest years I have had difficulties to encounter, with no aid to overcome them but self-reliance and perseverance. I have, therefore, been taught to believe that a determined will, energy and perseverance will accomplish anything not inhibited by the fiat of Omnipotence."

At the close of the war Judge Oldham retired to Mexico and engaged in the task of writing an account of the "Last Days of the Confederacy," and as a means of supporting himself he learned the art of photography from a Frenchman in Cardova, and pursued that calling during the fourteen months he resided there. Upon the fall of the

Empire in 1866 he went to Canada, and having seen in the papers the name of W. S. Oldham, of Texas, in the list of those pardoned, he started to his home, but on reaching New York, found that the pardoned individual was a relative who bore his name. Upon the assurance of his former partner, Col. G. W. White, who was then in Washington, that he would not be molested, he continued his homeward journey to that city, where his friends urged him to accept and apply for a pardon which they had been assured would be readily granted, but thanking them for their kind intentions and efforts, he declined the confession of guilt which a pardon implied. He said that being conscious of having done no wrong he could not ask for a pardon and thus impugn his past actions and his present convictions, and that all he wished was a passport to secure him from military arrest. He said to his friends who were interesting themselves in his behalf: "Tell President Johnson that if any twelve honest citizens of my country, possessing the qualifications of jurors would try me for treason, I feel confident that I can convince them that I have done right, but if they should decide that I have been guilty of treason, and the court should pronounce sentence upon me as a traitor, I would then consent to ask for and receive a pardon from him; but without such a legal conviction I could not."

He returned to Texas without molestation, and having settled in Houston, devoted himself exclusively to the practice of his profession. He took no part whatever in public affairs, but watched with eager anxiety for the welfare of his people the arbitrary measures of reconstruction. A citizen of no country, he felt himself an alien in the State he had served so faithfully and well, and in the prosperity of which he had centered all his worldly hopes. Thus wearing away the prime of his life and the meridian of his intellectual brilliancy, he was stricken with typhoid fever and died with that disease at Houston on the 8th day of May, 1868.

Judge Oldham was a lawyer of great ability and a man of extensive literary culture. His distinguished success was the just reward of his eminent qualifications and noble

traits of character. Starting in life in the midst of insuperable difficulties, without the usual opportunity of obtaining even the rudiments of an education, he relied upon himself, and guided by an unswerving purpose and sustained by a determination which distanced every obstacle in his pathway, he climbed with the sure pace of destiny to that eminence which formed the goal of his ambition. His career was a striking commentary upon self-reliance and perseverance in accomplishing the highest aims and noblest purposes, and, as he said, "anything not inhibited by Omnipotence."

He was also a man of the most amiable character, strictly moral in his habits, and a true Christian. He possessed a high sense of honor, a tender conscience, a flowing generosity and open-handed charity. He was a true patriot and a good man.

H. P. BREWSTER.

HENRY Percy Brewster was born in Laurens District, South Carolina, on the 22d of November, 1816. He descended from an old English family, which moved from Virginia to that State at an early period, and furnished many active participants in the Revolutionary struggle. He had two sisters and one brother, all of whom were deaf and dumb, and without the opportunities of obtaining the peculiar education which is now in reach of that class. The ingenuity of Henry was early taxed to contrive some way of communicating with them, and without any knowledge himself of any known system, he and his mother, who was a lady of brilliant intellect, invented a method by which they could easily converse with the mutes so as not to be understood by any other person.

At the age of twenty years, while visiting relations in Alabama, he heard of the fall of the Alamo and the massacre at Goliad, and being a magnanimous and sympathetic youth, and being now thrown upon his own resources, he determined to unite his destiny with the struggles of Texas for liberty and independence. Having made his way to New Orleans, he embarked in a vessel there and arrived at Velasco at the mouth of the Brazos in the spring of 1836, from whence he proceeded immediately to the headquarters of the Texan army, which he reached a short time before the battle of San Jacinto, and enlisted as a private soldier in a volunteer company. His introduction to Gen. Houston is said to have been merely accidental, and a freak of circumstance similar to that which made Sir Thomas Egerton Earl of Ellesmere and Lord Chancellor of England. The attention of the general was casually directed to his genius and appearance, and he made him his private secretary. He

was with the general when he was wounded at San Jacinto and accompanied him to New Orleans, whither he repaired for surgical treatment. In the month of August, 1836, he returned to Texas and was appointed by President Burnett Secretary of War. As the military affairs of the Republic were at this period comparatively quiet, he found time during his tenure of that office to study law, and, having engaged his fine intellect in this pursuit with his habitual vigor and determination, he was admitted to the bar in 1837, and at the expiration of President Burnet's term entered upon the practice of his profession at Brazoria with every prospect which energy and talent could command.

In 1840 he was appointed district-attorney of the Second Judicial District, but finding his general practice to be more congenial to his taste and independence of character, as well as more remunerative, he resigned in 1843, and from that time declined every advance of official allurements. He recognized the jealousy of his profession, and appreciated the adage that "Lady Common Law must lie alone" and can not be wedded with impunity to the wayward abstractions of politics.

He was a great friend and admirer of President Pierce, and during the latter part of his administration removed to Washington City, where he continued his practice until the clouds of civil strife gathered in 1861. He remained in that city until his arrest was threatened, and it is said that it was in consequence of a dispatch from him to the authorities at Montgomery in regard to the departure of the Federal fleet to relieve Sumpter, that the order was given to Gen. Beauregard to open his guns upon that fort.

And now at the sound of war, the spirit of the Texas Revolution and the fires of San Jacinto rekindling in his bosom, he entered the Confederate army and was made adjutant-general and chief of staff to Gen. Albert Sydney Johnston. In this capacity he shared the short but brilliant career of that officer in the Confederate service, and was near him when he fell while leading his victorious columns across the field of Shiloh. He was afterwards employed on special duty, chiefly with the command of Gen. Hood.

At the termination of the war he returned to Texas and resumed the practice of law in San Antonio, to which, as the Nestor of the Texas bar, he devoted his energies and talents until 1883, when he was appointed by Governor Ireland to the office of Commissioner of Insurance, Statistics and History, and held that position at the time of his death, which occurred from a stroke of paralysis on the 27th of November, 1884.

The fires of two revolutions had burned and waned in his bosom, and, while those of the latter one were quenched by the cold hand of fate, the embers of principle still glowed in all his being and inspired every sentiment of his soul. While the frosts of seventy winters had wrinkled his brow and silvered his locks, they had wrought no sear upon his heart. Neither the blight of years nor the storms of revolution could shake him from the *solida mens* of his conscientious faith; and if the heavens had burst asunder and broken up, the shattered fragments would have fallen upon him standing erect and still lighting the torch of duty.

Patriotism was the guiding star of his life, and, throughout his long career he never swerved in his endeavors to perform the obligations which he conceived to be due to his country and his fellow-man. If he was in some respects eccentric, his idiosyncrasies were such as often tread the paths of the purest virtue. He knew Texas from her cradle. Before the world had heard of her, he knew her. He was present at her birth, he saw her baptised into the family of nations, and attended her when she gave her hand and heart to the American Union. He abetted her in the wager of battle for her divorce. He saw and felt the decision which the Great Arbiter of war rendered against her, and it was happy for him that he lived to see the election of a Democratic President and the prospective complete reconciliation of the estrangement.

In the office of Commissioner of Statistics and History he found a congenial element. His patriotism found in its duties food for reflection and inspiration. His memory was retentive and vigorous, and at the time of his death he was personally cognizant of more important and interesting

events in the history of Texas than any other person in the State. His pride was enlisted in a service so agreeable to his taste, and he spared no pains in his efforts to gather and preserve the incidents and details of events in which he was oftentimes a prominent actor.

Colonel Brewster, though reserved in disposition, was a warm and constant friend and a devoted husband and father. He kept one of his daughters, a young lady of rare accomplishments, in his office with him, and was happy alike in having her companionship and her efficient services.

Amid the varied opportunities which his talents commanded he manifested no desire for the accumulation of wealth. He lived upon a higher plain than that which is devoted to the struggle for gain, and, while he was, as General Johnston characterized him, "a natural born aristocrat," and possessed every quality required for commanding positions, he had no thirst for distinction, and no ambition for notoriety; and, unless yielding to the demands of kindness and courtesy, he was reticent in regard to matters illustrating his varied experience and eventful life. He said that he desired no monumental stone, no epitaph, not even a grave mound, to mark his last resting place. He cherished the desire to be buried at sea, and on the evening before the battle of Shiloh, while resting under a tree and discussing with other officers the mighty struggle which he knew the morning would bring, he remarked to Colonel Thomas M. Jack, of General Johnston's staff, that he had no fears of death, as he was too far from the sea, but requested him, if he should be killed, to have him buried in the Gulf of Mexico. This desire he repeated to his daughter not long before his death, and she faithfully and nobly complied with his request. She carried his body to Galveston, where it was placed on board the little State steamer, *Hygeia*, which the Governor had kindly placed at her disposal, and was borne to a spot in the deep waters of the Gulf where the ill-fated City of Waco went down a few years since, and was there committed to the sea.

The author can not by any means subscribe to that materialistic doctrine which would consign genius and intellectual

culture to the narrow sphere of an earthly existence, and which would send us from this world disrobed of all intellectual graces, with no conception but that of accountability, and with no endowment but that of an embryo capacity for an existence certified only by the dim scroll of religious faith or the blank sheet of infidelity. There is with every one, notwithstanding the dogmas of casuists, an inward revelation that the acquirements and treasures of the mind are immortal, and, as the Greeks expressed it, *το αἰώνιον κτήμα* — “the possession forever;” and when we are told that “angels desire to look into these things,” we are reminded that the cravings of the intellect are manifested even around the very throne of Heaven, and that it there continues to weave the golden threads of thought, gather its ambrosial food and rise higher and higher, until it is merged in the zenith of illimitable light.

Col. Brewster was fond of the pure elements of nature, and sought to attain in death that perfect freedom from its alloys and dross which he had striven for in life. But while, as if to escape the ruins of man, he sought a burial beneath the waves which in his youth had borne him to the Texan shores, those shores will ever preserve his memory and proclaim his virtues. No darksome caves of the deep, nor emboweled caverns of the earth, nor crypts of time can sepulchre these. They rest in the golden urn into which Texas will always gather the scattered ashes of her great and good.

THOMAS MCKINNEY JACK.

It is seldom that nature, in her partiality which designates, here and there, an individual as the favored recipient of her special endowments, and ordains him to a particular sphere of eminence, groups such an array of talent in the limits of a single family, and fashions the moral and intellectual traits of so many of its members within the mould of greatness, as she conferred upon that to which the subject of this sketch belonged. As the author has had occasion to observe in another work in regard to the Yergers, of Mississippi, the Jacks, of Texas, seem to have been born lawyers.

Captain James Jack, the grandfather of Thomas, was selected by his fellow-citizens of Charlotte, North Carolina, to convey and present the famous Mecklenburg Declaration of Independence to the Colonial Convention at Philadelphia. His uncle, Patrick C. Jack, was one of the judges of the Supreme Court of the Texas Republic, and his father, William H. Jack, whose sketch is presented in this work, was one of the most distinguished lawyers of the Texas bar.

Thomas McKinney Jack was born at San Phelipe, Texas, on the 19th of December, 1831. His mother was Laura Harrison, daughter of Isham Harrison, a planter of South Carolina, afterwards of Mississippi, where he was known as "Father Harrison," and was one of the best men the author ever knew. Thomas was highly educated, and having attended Georgetown College, in Kentucky, a short time, he entered Yale College, from which he was graduated in 1853 with all the literary accomplishments which that celebrated institution could bestow. He afterwards read law in the office of Judge W. P. Ballinger, of Galveston, his brother-

in-law; was admitted to the bar in that city in 1855, and entered upon the practice of his profession as the partner of his preceptor with the most flattering prospects. In 1857 he was elected to the position of County Judge, and in 1859 represented Galveston County in the Legislature.

In 1860 he was an elector on the Breckinridge and Lane ticket, and rendered efficient service in promoting the overwhelming majority given in Texas for the distinguished Kentuckian. With the exception of these intermissions, he continued his practice with a growing reputation until the outbreak of the civil war. Upon the withdrawal of Texas from the Union in 1861, he acted as aid to General Sydney Sherman in organizing State troops at Galveston, and accompanied the expedition for the capture of Fort Brown on the Rio Grande. Returning to Galveston, he enlisted in the Confederate service as a private in Wharton's company of Terry's rangers, and never quit the field until the close of the war.

Soon after joining the army he was promoted to first lieutenant and made aid-de-camp to General Albert Sydney Johnson, who had known him from childhood, and was serving in that capacity when this great Southern leader fell swooning into his arms on the plains of Shiloh. He was then transferred to the adjutant-general's department, and was assigned to duty with the rank of major as adjutant-general of Polk's corps in the army of Tennessee. He was soon afterwards made lieutenant-colonel, and served upon the staff of General Polk until the death of that officer at Kenesaw Mountain, who also died in his arms. He was then made adjutant-general of the district of Texas, and served as such until the termination of hostilities, when he returned to Galveston and resumed the practice of his profession.

The character of Thomas M. Jack is one of the brightest luminaries in the annals of Texas eminence, and one that would have adorned the purest and most brilliant pages in the history of any age or country. Inheriting the legacy of ancestral emulation, the spirit which impelled the third Brutus to emulate the glory of the first, he possessed

the invaluable stores of noble examples and the wealth of hallowed inspirations, which early planted in his bosom the strongest incentives to virtuous and vigorous action, and these expanded and developed into the highest order of moral and intellectual character, rounded and arched over with that blending of virtues which constitute the patriot, the philanthropist, the eminent lawyer and the perfect gentleman. He possessed a brave, candid and honorable nature, and was in himself the mirror of honesty and truth. His armor was always burnished for the maintenance of right, and his arrows were whetted for opposition to wrong; yet he was always courteous, generous and chivalrous in his demeanor—high wrought and sensitive as to the means and methods of attaining his ends, and no one was more tenderly considerate and sympathetic in his regard for the feelings of others.

He was a lawyer of fine ability, and his career at the bar was like a meteor which flashed upon the jurisprudence of Texas and dispensing its beams suddenly disappeared in the fullness of its glory. In the study of his profession he cherished the lofty purpose of becoming a champion of justice, a factor in the promotion of the welfare of society, and his talent, his precept and example elevated the profession which he adorned, and bettered the community in which he lived. As a lawyer, soldier and citizen, the glare of his character will shed light upon the future generations of Texas, and kindle incentive and emulation in the hearts of all who aspire to the attainment of the highest respect and admiration of their fellow-citizens.

Colonel Jack was married in 1857 to Miss Nannie Knox, who was a native of Lincoln County, Missouri, and a niece and ward of the venerable Robert Mills, of Galveston, who, at the time of his death, was the oldest living merchant in Texas. In the noble qualities and accomplishments of this lady he found a polishing response to every lofty sentiment and noble effort, and his rougher nature became chastened by the tender cords of domestic affection. He died in Galveston on the 26th of August, 1880, soon after his return from the Cincinnati Convention, to which he had

been sent as a delegate. It is rarely that a lawyer amid the fierce rivalries of the bar can command or maintain the universally affectionate esteem enjoyed by Colonel Jack. He never permitted the heat of argument to render him unobservant of a kind and polished ethics, and he was beloved by all of his professional associates. I will close these observations upon his character with the fervent tributes paid to his memory by members of the Galveston bar upon the announcement of his death to the courts of that city — by those who knew him well in every sphere of his life.

Remarks of Hon. James B. Stubbs: —

“I think I can see him now, scorning danger, his face aflame with that shining light we have wont to see enthroned upon his brow and flashing from his eyes in the forum, as he maintained the right, resented the wrong and illustrated the high purposes and generous promptings of which he was a living exemplar as well as an exponent.

“The career of a true lawyer affords a sphere of honor and usefulness second to that of no other vocation. This he recognized, and it was not to him a stepping-stone to any preferment. He was the *beau ideal* of a lawyer. Who, that has ever seen or heard him in the trial of a cause, will withhold his assent to this statement? He never sacrificed right to expediency. From the opening of a case to its close, his just conception of the law, his faculty of imparting his ideas, his skill in eliciting evidence, his tact in the management of the case, his fairness to his adversary, and then his lucid, earnest argument, smoothly flowing in rounded periods, marshaling facts and drawing conclusions with masterly logic and eloquence, all held the interest, admiration, and carried conviction to the hearer. Never did he ‘extenuate or aught set down in malice.’

“When he spoke, his face usually lit up with a radiant smile and his cordial greeting spread an atmosphere of cheerfulness about him. If his mission in life had been to make men happy, well was it fulfilled, for the world was better and happier for his having lived in it. His ready sallies of wit, and he was full of playful raillery, left no sting. In a group of persons, he was the central figure —

the choice spirit. That indefinable quality, which, for want of a better name, is called personal magnetism, drew men about him in pleasant talk, and his views were sought, and found acceptance, for he illumed whatever he touched. He was the light and life of every circle. Now that he has gone, how dull and commonplace seem the scenes that know him no more.

"I have spoken of his kindness to the young. He was their 'guide, philosopher and friend,' as well as their admired pattern. To the younger members of his profession he was especially gracious, showing them the same considerate courtesy he exhibited to the first men of the land.

"He was the soul of chivalry and honor. His winning address, and his sterling qualities of head and heart, rendered him the most perfect gentleman I ever knew. While his character was 'as round and perfect as a star,' yet, if I were called upon to particularize any predominant trait, I would name his sympathetic kindness, his utter unselfishness, that made his life a living embodiment of the Golden Rule."

Response of Hon. T. C. Hume: —

"Is there a man of this bar — especially a young man — who has not been comforted by his words of encouragement simply spoken in season; who has not felt the pressure of his hand, and been warmed into hope by the light of his eyes, at some time when the need of a friend was exceeding sore? And is there a lawyer here, old or young, who does not feel it is something — that it is much — to have lived within the sphere of this man's influence; to have marked the loftiness of his professional name and practice, and to have confessed to his own heart the ennobling reflection of his personal virtues? He was one man who spoke no slander, nor listened to it; who never prostituted the opportunities, nor solicited the employments, nor haggled for the rewards of the profession; who never intervened between his brother and the clientage he deserved to win or keep; who held in knightly scorn the belittling temptations which often beset and sometimes degrade our ancient order."

Response of General T. N. Waul:—

“In the prime of manhood, in the fullness of physical vigor, without a trace of decay or diminution of capacity; at the summit of professional distinction, in the merited enjoyment of the noblest of earthly rewards; the respect and admiration and the love of all who knew him; still growing and waxing stronger in all his great elements, he has gone from us. We shall greatly miss him from our fraternity. How much a loved and only sister, the guide of his boyhood, the adviser of his mature years, the daily companion of his life, shall miss him, we will not attempt to describe. Nor can we realize in thought, much less depict in language, how much his wife and children shall miss him as the evening shadows fall darkly upon that home of which he was the light and life.”

CHAPTER VII.

THE STATE BENCH — EMINENT LIVING JUDGES — O. M. ROBERTS — RICHARD COKE — J. H. BELL — A. H. WILLIE — THOMAS J. DEVINE — JOHN IRELAND — R. S. GOULD — J. W. STAYTON — C. S. WEST — R. S. WALKER — JOHN P. WHITE — S. A. WILLSON — J. M. HURT — A. S. WALKER — GEORGE CLARK — A. T. WATTS — W. S. DELANEY — E. B. TURNER.

ORAN MILO ROBERTS.

This eminent lawyer and patriot is a native of South Carolina and was born in Laurens District, on the 9th of July, 1815. At an early age he removed with his father's family to Ashville, in the mountainous region of North Alabama, where he was engaged in the labors of the farm. His early life was attended with many difficulties and trammeling circumstances. But he was an ambitious and aspiring youth, and determined to be *aut Cæsar aut nullus*. One of the noblest commentaries upon American institutions is the facility which they afford to genius and rectitude for rending the clouds of obscurity, for bursting from the most adamantyne gyves of condition into the glare of honor and the full round orb of fame. Fate has here no iron bed upon which its victims, like those of Procrustes, are bound and fitted by the fiat of unalterable decree. Here genius, once fledged in the nest of morality, leaps forth like a young eagle from its eyrie, and spreading the wings of resolution, soars away to the heights of its ambition and capacity. Here honor and distinction demand no glittering armorial, wealth no splendid heirloom of inheritance, and eminence no pomp of pride or lictorial badge.

Here fame requires no arbitrary circumstances, depends upon no golden opportunities, and exacts no impersonal qualifications; but only that he who would reach its realms shall be guided by the beacons which it has established along the *sacra via* of its glory.

At the age of sixteen years, young Roberts, full of natural genius and ardor, and with the inspirations which the institutions of his country engendered, left his plow, and with slender means determined to obtain an education, and met at the outset with the fortune which Providence seems always to provide for those who earnestly seek their own advancement. Through the kindness of Ralf P. Lowe, an attorney of Ashville, and afterward an eminent lawyer, governor, and supreme court judge of Iowa, he obtained a situation in his office, where he prepared himself for college, and in 1836, at the age of twenty-one years, graduated at the University of Alabama in a class which furnished many others who afterwards attained distinction.

He began the study of law in the office of Judge Ptolemy Harris, near St. Stephens, in South Alabama, and acted at the same time as private tutor to his sons to defray his expenses. He completed his studies in the office of Wm. P. Chilton, of Talladega, who was subsequently one of the judges of the Supreme Court of Alabama. Having obtained his license, he settled at Ashville in the successful practice of his profession, and was soon afterward elected to represent his county in the Legislature of the State.

But his aspirations was not yet satisfied with the flattering prospects which spread themselves before him. The young Republic of Texas, bright with the halo of fame and the glory of heroic achievement, extended inviting arms to his patriotism. Its unlimited resources and unbounded prospects presented their allurements to his ambition, and in 1841 he removed to Texas and located at San Augustine, which was at that time a place of great political and professional activity, and the Athens of the Republic. He was equal to the severe test which a claim to distinction demanded and to the expectation which his talents engendered, and he was soon recognized as one of the most

skillful and logical, as well as most learned advocates at the bar of that district.

The elevated standard of professional excellence established by the eminent array of legal talent which surrounded him, and which he made the goal of his attainment, beckoned him upward and onward. His advancement responded to the aspirations of his genius, and in 1844 he was appointed by President Houston to the office of district attorney, which he held until the annexation of Texas to the Union.

It was customary at that time for the lawyers to travel around the circuit in company with the judge; it being an old English custom which was introduced at an early day in the colonies, and long lingered in the States of the Union, and was transplanted in the Republic by the judges and lawyers who had been accustomed to the usage in their native States.

In reference to this habit Governor Roberts says: "When the time for holding the courts arrived it was not unusual to see a dozen or more lawyers and the judge mount their horses, with saddle-bags, blankets, and tie ropes; and, thus equipped, start on their journey around the district, which then embraced many counties, comprising a large scope of country. As some of them would drop out of the company at different points others would fill their places, so that about an equal number of traveling lawyers in addition to the local bar, would be found in attendance at nearly every court. This mode of practice was continued until the civil war, since which the members of the bar have become more and more localized in their practice."

In these professional excursions he traveled over the country from the Sabine to the Trinity—a distance of one hundred and fifty miles, and experienced all the hardships incident to travel in a new and sparsely settled country, encountering rain and storm, sloughs, and swollen streams, which he was often obliged to swim in order to reach his destination at the proper time. On one of these occasions, being the youngest man in the party, he was selected to swim the Neches River on horseback and bring over a ferry-

boat which was fastened to the opposite bank. He says, however, that the universal hospitality of the people amply compensated them for the fatigues and inconveniences of these journeys. Night and day their doors were thrown open to the travelers, and a hearty welcome extended them to share whatever comfort they could render and usually without charge. He says that their humble fare, seasoned with pure and disinterested kindness, was more palatable than the most artistic dishes of modern hotels.

It was during these travels that he first observed the character and habits of the people of all classes and occupations, the peculiar and diversified characteristics of the country, and its varied natural productions and capabilities; which excited the investigations of his inquiring mind, and afforded him a knowledge of the wants and wishes of the people, which he afterwards impressed upon the laws and institutions of the State.

On these occasions he was brought into intimate companionship with the lawyers of the district, who were for the most part men of culture and intellectual vigor, but of distinctive characters and varied attributes, and he learned from this informal association with them the varied elements and compositions of professional character. From the old citizens of the country he learned much of its past history. Among these there were men who had settled in the land as early as 1822, and had participated in all the revolutions and changes of government that had occurred since that time. He found them familiar with all the stirring events of the past and willing at all times to communicate them. His business afterwards led him to extend his researches over nearly the entire State and to note the variety in the condition of things in every section, which furnished a still wider field for investigation and reflection.

On the organization of the judiciary of the new State in 1846, he was appointed by Governor Henderson judge of the Fifth Judicial District. He was then but thirty years of age; but public sentiment called for his services and his promotion was received with general satisfaction. He was appointed for the term of six years; but, having

served five years, during which he was engaged more than eight months of each year in the active duties of the bench, he resigned and returned to his practice at the bar.

The judicial duties of Judge Roberts during that period were peculiarly arduous and exacting. He was the first judge of the district under the judiciary system of the State government, and the task devolved upon him of establishing a course of procedure in conformity with the new order of things; to interpret and apply the body of statutes enacted under the new organic law, to bring them for the first time to the test of the Constitution, both of the State and the United States, and to fit them upon society. The rights, immunities, and liabilities of the citizen were to be ascertained and fixed upon a solid basis, composed of the different elements upon which they rested, and fashioned by the new innovations, both of the statute and organic law. This was rendered more difficult by the scarcity of precedent. But few questions of importance had been settled by the Supreme Court of the Republic, and the untamed elements of its jurisprudence mingled with the unexplored streams of the new system. To lead these into the smooth channels of justice required legal talent and judicial capacity of the highest order. But his ability and industry met all the requirements of the situation; and, gathering up the legal fragments of the revolution and annexation, he blended them into a harmonious machinery, and made a lasting impression upon the jurisprudence of the State.

In 1857 he was elected associate justice of the Supreme Court, to fill the vacancy caused by the death of Judge Lipscomb, and held this position until 1862, when he resigned and became colonel of the Eleventh Regiment of Texas infantry in the Confederate army.

A thorough Jeffersonian in his views of government, Judge Roberts was a staunch advocate of State's rights and was in favor of prompt and decisive measures to repel the aggression of the Republican party upon the rights and institutions of the South. As early as December, 1860, he delivered an able speech at Austin upon the "Impending

Crisis," in which he said: "What shall Texas do? As one of her citizens, I am for State action—action by the constituted authorities of the State—action singly and conjointly with other Southern States, until we are made secure in our rights, liberties and honors. Such action should be prompt, calm, deliberate, harmonious and well directed, so as to secure the desired object, and at the same time preserve peace and social order among ourselves. Our allegiance is due to both the State and Federal governments, because the sovereign power of Texas, at the time of our annexation to the general government so ordained it as its will. And until the same sovereign power shall be brought into action, and declare a different will, it is our duty as citizens to make ourselves subservient to the one as well as the other."

Discussing the question whether it was best to seek redress within the Union by demanding a constitutional amendment guaranteeing protection to the rights of the Southern States, or by quietly withdrawing from the Union, he continued: "In all these stages of State action, too great solicitude can not be felt by all parties, to preserve social order; so that if the Federal government should refuse to recognize the right of the State to exercise its reserved power of changing its form of government, and should endeavor to subjugate it, the energies of the people may be united in repelling invasion. Which one of these remedies may be adopted is for the people to say when they shall have found the means of expressing their will. It is my purpose now to show that the present attitude of public affairs justifies them in adopting either of the remedies that they may think necessary for their safety. I have no fears that inconsiderate rashness will control them. They have pondered upon the issues of this crisis long and well. They have made up their minds. There is no agrarian spirit abroad in this country. There is no war of classes. There is no conflict between labor and capital. Our people are not asking or seeking to extort any favors from the government to themselves, or to deprive others of any right. They have no desire for a social rupture at home.

Their excitement arises from an entirely opposite cause — a high resolve now to throw themselves in the breach, not to destroy, but to protect rights; not to destroy property, but to protect property; not to destroy life, but to make life worth having; not to produce discord, but to end it. This excitement is not a shallow noisy rattle, but a deep irresistible current, springing from the firmest conviction of the mind."

These sentiments vibrated upon the chords of the public heart, and, in consequence of the views which he announced in this speech, he was chosen by acclamation president of the Texas Secession Convention of 1861, in which he advocated but one remedy — that Texas should resume her sovereignty and withdraw from the Union; and he promptly accepted the appeal to arms. He was a gallant and efficient officer, and led the Eleventh Regiment with distinction through the campaigns of the Trans-Mississippi Department.

In 1864, while still at the head of his regiment, he was elected Chief Justice of the Supreme Court to succeed Judge Wheeler, upon which he resigned his commission in the army and again took his seat upon the bench. At the close of the war he returned to Tyler and resumed the practice of his profession; but his public services were soon again placed under requisition, and he was elected to represent his county in the State convention of 1866, and was made chairman of the judiciary committee of that assembly, in which he took an efficient part in framing the Constitution under the Johnson reconstruction.

In August, 1866, he was elected to a seat in the United States Senate, and repaired with his credentials to the Federal capital, but being rejected, together with his colleague, the venerable David G. Burnett, he placidly returned to Texas and confined his interest in public affairs to the redemption of his State from the Moloch grasp of Federal oppression.

From 1868 to 1870 he was professor of law in the High School at Gilmer, Texas, and upon the return of Democratic ascendancy in 1874, he was reappointed by Governor

Coke to the office of Chief Justice of the Supreme Court, and, in 1876, was elected to the same position by the people.

As a lawyer Judge Roberts is thorough and profound. Tutored in the school of early labor, he began the study of his profession properly, and early acquired the requisite and infallible habits of success. His love of truth and his powers of research found no satisfaction within the bounds of superficiality and no lodgment upon the surface of investigation; hence he never rested with the comprehension of mere abstract propositions, but sought the origin, history and philosophy of law. Subsidiary to these qualities, he possessed natural endowments of a high order. The natural bent of his mind is highly philosophical and reflective. His keen and ready perception, his trained habits of analysis and logical synthesis, enabled him to eliminate principle from sophistry, to sift the real from the hypothetical, and present truth in the simple and plain robes of common sense.

These qualities which had given him reputation as a lawyer and distinction as a district judge, he brought to the Supreme Bench enlarged and intensified by experience, and ripened by the sunshine of his meridian intellect. His duties as a Supreme Judge gathered and concentrated his powers, and he blended the ardor of devotion and the candor of rectitude with the calm depths of wisdom.

His decisions are distinguished for their logical clearness, their search for truth and justice, and for their lucid exposition of principle. It was said of the brilliant Sergeant S. Prentiss that he "argued a case all to pieces;" and, while Judge Roberts always avoids mere *dictums* and questions *non coram*, it may be said, that as to its merits, he decides a case all to pieces. He leaves no question in doubt necessary for the vindication of justice, or to establish clearly the rights and relations of the parties.

His opinions are numerous. They extend through fifteen volumes of the Texas Reports, and involve almost every important question that can affect society. His interpretation of the rule in Shelly's Case, 21 Texas, 804, in which he

held that in a deed made to a person for the term of his natural life, and at death to his lawful issue forever, the words "lawful issue" are words of purchase, and not of limitation, has been adopted by several law colleges.

The following are among the important questions which his decisions have enlightened: The right of eminent domain, 22 Texas, 504; statute of frauds explained, 22 Texas, 708; right to forfeit charter, 24 Texas, 80; *mandamus* against a State officer, 24 Texas, 317; law and justice compared, 25 Texas, 245; character of deceased evidence in murder cases, 43 Texas, 243; *mandamus* against commissioner of general land office — one of the finest opinions in Texas jurisprudence — 40 Texas, 647; rules for the courts of Texas — drawn by him — 47 Texas, 598. These cases will well repay the most careful study.

In 1878 he was elected Governor of Texas, and his administration was characterized by the most patriotic, vigorous and successful efforts for the promotion of the material prosperity of the State, and not only gave unusual satisfaction to its citizens, but added luster and honor to its name abroad. In 1880 he was re-elected, and in his inaugural address to the seventeenth Legislature, said: "In review of the eventful career of Texas in the past, long an unknown land to the civilized world, emerging into existence in the gloom of a far-off country, cradled in revolutions and wars, growing up with a history filled with sore trials and grievous sacrifices, alternated by glorious achievements, both civic and military, famous for her great men and chivalric people, and now rising up conspicuously into general view, with her vast proportions and magnificent resources, and fairly entering upon the grand struggle for their development, I can but feel diffident of my ability to be equal to the task before me as your chief magistrate, now for the second time called to preside over the destinies of our beloved State. But sustained by an ardent zeal for her prosperity and future greatness, I cheerfully and hopefully accept the position at the behest of a generous people, who have manifested their desire to place their public interests under my care and direction, as they have done before. It is only by the

wisdom of the Legislature, the harmonious co-operation of the executive officers, and the patriotic aid of the citizens that I can hope to be equal to the grave responsibilities imposed upon me, in the effort to make Texas what she should be in the near future—the great and prosperous State of the American Union.”

Serious efforts had been made, from time to time, to remove the capital from Austin, and the diversified and sometimes conflicting interest of the State had even caused the project of dividing it into several States to be discussed. To both of these enterprises Governor Roberts was strenuously opposed. He wished to preserve Texas in all the grandeur of its original integrity and in all the panoply of its power, and he appreciated the wisdom of the patriots who selected Austin as the seat of government. The destruction of the capitol building by fire caused the question of removal to be agitated with increased ardor in some parts of the State during his first administration, and it was during his second administration that provision was made and a contract effected for the erection of a capitol building which, when completed according to the specifications, will be next to the capitol at Washington, perhaps the most spacious and elegant edifice in America. This building was by the original contract to be constructed of limestone of a standard quality quarried near the city of Austin; but it being recently ascertained that a sufficiency of the required material could not be procured from the neighboring quarries, a board, authorized by the Legislature and consisting of the present Governor, Controller, Treasurer, and Attorney-General, has so amended the original contract as to cause the edifice to be built of a beautiful speckled fossiliferous granite found in inexhaustible quantities in Burnet County. For this structure the State by the original contract agreed to grant to the contractors three millions of acres of the public lands in one body, which comprises a territory perhaps larger than the State of Rhode Island, and by the amended contract the contractors are to have in addition the labor of five hundred convicts without cost. The building as estimated will cost over five million of dollars,

and its erection, it is hoped, forever unifies the State and forever establishes Austin as its capital.

There is no man in Texas more familiar with its people, its products, its varied characteristics, diversified interests and vast resources, than Governor Roberts, and while Governor of the State in 1881, he found time amidst his official duties to embody his knowledge in a valuable little book describing Texas, and the development of its advantages and resources. In this work he presents the causes of delay in the settlement of the country, which he attributes chiefly to its having no good port of entry on the Gulf Coast. He also presents an outline of its physical geography, the great variety of its productions, the comparison of its different belts, its natural resources, its natural wealth as found in its mineral waters and its water courses, the methods of cultivation of crops, the modes of transportation and of travel in Texas, its flora and fauna. In this work he shows that the pursuit of a train of useful business in Texas presents a reasonable certainty of success to every one who will intelligently and steadily follow it.

He was a strenuous advocate and supporter of the educational interests of the State, and in his message to the Legislature in 1881, said :

“In all the grades, from the highest to the lowest, the educational system should be regulated and adapted to the wants of the people in every condition of life ; should have in all its parts and branches a well defined consistency in relation of one to the other in the different gradations, and should all be under the same supervision, government and control, to the extent that it is fostered by the State government, not including private institutions of learning. The natural division in the gradation of schools, in order to meet the wants of the people is into three steps or degrees of education. The common schools for the millions, the academies for the thousands and the college or university for the hundreds. So it has been and ever will be ; and the encouragement and provision for each degree are equally essential in the effort to elevate society.” His career as Governor was highly beneficial to the State, and when he

retired from that office in 1883, he left the affairs of Texas in a prosperous condition.

Ex-Governor Roberts is a man of great amiability of character. In social life he is bland, polished and refined, yet plain and unostentatious in his manners, and is a general favorite with the bar and people of Texas. His vast store of learning, his pure professional and social ethics, and his conversational powers, render him a welcome and interesting guest in every circle, and he is revered by the rising generations of the State.

In 1883 he was appointed by the Board of Regents Professor of Law in the University of Texas—a position which he now holds, and for which he is peculiarly qualified by his knowledge of law and his eminent exemplification of the highest professional standard.

Ex-Governor Roberts is now in his seventieth year, and, like the Grecian sage, has seen two generations pass away, whose polity was enlightened by his wisdom, whose welfare was promoted by his counsel, and now the third catches the inspiration of his example. He is a living Gamaliel of the perfect manner of democratic customs and institutions, and his services are still eminently useful in the inculcation of the great principles of truth and the precepts of wisdom, as well as the lessons of a noble example, upon the minds of the rising generations of Texas; and when he shall be summoned from the sphere of his earthly labors there is no one who will go up to the great high court with a clearer brief—with a brighter scroll of purpose, of duty and of performance.

RICHARD COKE.

The distinguished subject of this sketch was born in Virginia, in the year 1829. He had the advantages of a thorough education, and graduated with honor at William and Mary College in 1849. Having chosen the profession of law, he diligently and thoroughly prepared himself for the bar, and on obtaining his license in 1850 he removed to Texas and located at Waco, where he began the practice of his profession and has since continued to reside. He was a young man of sterling qualities, steady habits, and popular manners, which, in conjunction with a strong mind and finished education, soon opened to him the avenues of success and distinction. His professional ascent was rapid and brilliant, and in a few years he took a position in the front rank of the bar of his district.

In 1865 he was appointed district judge, and so ample were the qualifications which he manifested in this capacity, and so able and efficient was his career upon the district bench, that, in 1866, he was elected an associate justice of the Supreme Court. He held that position three years, and adorned it with an ability and purity honorable to himself and, at that time, particularly elevating to the jurisprudence of the State.

At the general election held in December, 1873, in pursuance of an act of the Legislature and the proclamation of E. J. Davis, then Governor of Texas, the Democrats elected the entire delegation of Congressmen, a large majority of the members of the State Legislature, and at the same time elected Richard Coke Governor of Texas by a majority of nearly fifty thousand votes. The Supreme Court was at that time composed of radical partisans, some of whom were exotics and adventurers, of military importation; and

the leaders of the Republican party, having procured an individual to act as designated, concocted a fictitious case to enable the court to decide upon the political question as to the validity of the election. For this purpose one Jose Rodriguez, a Mexican, applied to Wesley Ogden, of the Supreme Court, whom the reporters contemptuously style *the presiding judge*, for a writ of *habeas corpus*, alleging in his petition that he was restrained in his liberty by one A. B. Hall, sheriff of Harris County, upon the charge of having voted illegally at the late election. The case came up on the trial of the writ under the style of *Ex parte Rodriguez*, reported in 39 Texas, 705, and Hon. Frank M. Spencer, district attorney for Harris County, was, in the absence of the Attorney-General, appointed by the court to represent the State. A number of gentlemen representing the Austin bar, obtained the consent of the court to assist him. These were M. A. Long, C. S. West, Thomas E. Sneed, W. M. Walton and A. W. Terrell; while A. J. Hamilton represented the relator. The counsel for the State promptly challenged the jurisdiction of the court upon the ground that the case was fictitious and was invented for the purpose of extorting from the court an opinion as to the constitutionality of the election. This position was substantiated by the sworn testimony of Judge George Goldthwaite, of Houston, who was cognizant of the facts, and by the personal averment of the district-attorney, who asked permission of the court to expose the fraud, or that Rodriguez be discharged. The motion to dismiss for want of jurisdiction was overruled, whereupon the district attorney, representing the Attorney-General, indignantly withdrew from the case. The court then proceeded to the extremity of the issue and declared the election illegal and void, upon which Governor Davis issued his proclamation prohibiting the assembling of the newly elected Legislature. That body, however, promptly convened on the day appointed for its meeting; yet the Governor declined to receive any communication from it, and appealed to General Grant, then President of the United States; but he declined to interfere. Davis finally vacated the Governor's office

and Governor Coke took peaceable possession of it. The reporters, in a note to this case, aptly remark that it belongs to the political historian to perpetuate the memory of the events and circumstances of this case; and as to the correspondence and details connected with it, and the observations which it suggests, the author of this work will likewise pass the task of commemorating them to that functionary. It was, as the reporters observe, a purely partisan political, and not a judicial question.

On the 15th of January, 1874, Governor Coke and Lieutenant-Governor Hubbard were duly inaugurated and installed in their respective offices, and the Legislature immediately enacted an amendment to the Constitution reorganizing the Supreme Court and increasing the number of judges to five, upon the adoption of which Governor Coke promptly reorganized the court and removed the three judges of *Ex parte Rodriguez* fame. His appointments to the bench and to all other important positions were highly judicious and felicitous, and during his administration the entire machinery of the State government, wrenched from partisan control and the clogs of imbecility and corruption, was again brought into smooth and harmonious motion. New avenues of prosperity were opened up to the people, new enterprises were stimulated, and new hopes inspired, until the highest anticipations of prosperity seized upon the minds of all classes of people. Railroad communications of the most vital importance were established, and a constant tide of immigration flowed into the State.

The people of Texas smarted under the exotic Constitution forced upon them by the military authority and its allies in the State, and it was under the auspices of the administration of Governor Coke that the excellent constitution of 1875 was framed and adopted, and which forms the present organic law of the State. This constitution effected a change in the tenure of office, and in April, 1876, the Governor and Lieutenant-Governor were re-inaugurated; but in May Governor Coke was elected to the United States Senate. He, however, continued to perform

the duties of the gubernatorial office until December, and on the 4th of March, 1877, took his seat in the Senate, to which he has been twice re-elected.

In his second message to the Legislature in January, 1875, in referring to the state of affairs existing at the time of his first inauguration and the great change wrought by Democratic policy, he said: "The circumstances under which you assemble are auspicious. How striking the contrast with those which surrounded your first convention, one year ago? Then darkness and gloom brooded over the land, and over the hearts of the people. Forebodings of danger to popular liberty and representative government caused the stoutest and most patriotic among us to tremble for the result. A conspiracy bolder and more wicked than that of Catiline against the liberties of Rome, had planned the overthrow of free government in Texas. The capital and its purlieus were held by armed men under command of the conspirators; and the treasury and department officers, with all the archives of the government were in their possession. Your right to assemble in the capitol, as the chosen representatives of the people, was denied, and the will of the people of Texas scoffed at and defied. The floors of the halls in which you now sit, had been examined by the conspirators, and it had been ascertained that the armed forces entrenched in the basement beneath could pierce them with their missils, if necessary to attack you. The President of the United States was being implored to send troops to aid in overthrowing the government of Texas, chosen by her people by a majority of fifty thousand. The local and municipal officers throughout the State, in sympathy with the infamous designs of these desperate and unscrupulous revolutionists, taking courage from the boldness of the leaders at the capitol, were refusing to deliver to their lawfully elected successors the offices in their possession. A universal conflict of jurisdiction and authority, extending through all the departments of government, embracing in its sweep all the territory and inhabitants of the State, and every question upon which legislative government is called to act, was imminent

and impending. The treasury of the State was bankrupt ; even trust funds, protected by especial guarantees of the Constitution, had been plundered. The credit of the State was deeply dishonored, and warrants on the treasury were being hawked for sale on the streets of the capital at ruinous discounts. All was doubt, suspense and anxiety ; and Texas seemed on the verge of a convulsion, the consequence of which no one could foresee, and brave men trembled to contemplate.

“ How changed the condition now ! All is bright, hopeful and cheering, Free government is established ; the sovereign rights of the people vindicated ; public confidence restored ; State credit redeemed ; official accountability recognized and enforced ; the country prosperous and the people contented. While much remains to be done in the solution of the great questions of race, education, monopoly and taxation, and many evils entailed by former maladministration, as well as those that were inevitable sequences of the great social and political revolution through which we have passed, still remain with us ; yet the operations of our governmental system are healthy and steady, and in due time, with the lights which experience and a more intimate knowledge of the subjects to be dealt with, will throw upon them at each step of its progress, I have no fears that a solution of them in accordance with correct principles and good government, and in the interest of humanity and progress will be evolved, and that abuses in administration and errors of legislation will be corrected and reformed. Abuses which have taken deep root, and errors which have been sanctioned by years of acquiescence, can not be eradicated and cured in a month or a year. A State which has been rocked with the throes of revolution for twelve years, whose society, laws and institutions have been unsettled and in a great measure overturned, can not, in a short period, be adjusted in its new relations, so that its machinery of government will run smoothly, without jarring or attrition. Time is necessary after the health of the body politic is restored, to do this, to fit the parts to each other, and to adapt the whole to the new conditions of society.

An impatient and unreasoning expectation of immediate and thorough reform in government, upon a change in administration, after a long period of misrule and unrest, before a policy can be developed and bear its legitimate fruits, will always meet disappointment. The people of Texas have their government in their own hands, and its excellence will depend upon their wisdom.

“Looking beyond the workings of our own State government, the present prosperity and splendid future of Texas, into the broader field occupied by the National government, we find abundant evidence in the recent unprecedented uprising of the American people, that there, too, the great work of reform has commenced, — let us hope, to be prosecuted until honest, economical administration, inside of the limitations of the Constitution, under just and equal laws is attained; until the machinery of the Federal government is no longer used to stir up strife and conflict in the States, and create necessities, real or fancied, for Federal intervention in affairs of purely local concern, and the moral and intellectual forces in each State are ‘let alone’ to contend, without outside interference, for the mastery in directing and controlling its government; until gunboats and battalions shall no longer, under the Federal flag, menace American cities and the lives and liberties of American citizens; and free suffrage is not intimidated and overawed on pretexts invented and brought about by Federal agents; until American citizens are protected in their lives and property against foreign desperadoes, robbers and thieves, and a corrupt Indian ring ceases to fatten on the blood and toil of the frontier; until the burdens of government shall rest equally, according to wealth and population, upon every section of the Union, and capital and monopoly shall cease to be the ruling power of this government; until rings and combinations shall no longer be permitted to plunder the treasury and manipulate the policy of the government to their advantage, and official accountability and integrity is restored; until the farmer and producer is emancipated from thralldom to the manufacturer and capitalist, and labor meets its legitimate reward; until each

State in the Union is recognized as the equal of any other State, and all share alike in the benefits of a common government, while none shall bear more than its just share of the burdens; until the Constitution shall be the supreme law for all the States, South as well as North, for Louisiana and Massachusetts alike, and the national flag shall symbolize to the people of both the beneficence as well as the power and greatness of the republic, and shall equally challenge their admiration and affections; and last, and above all, until the people of the States of the South can feel, as it is the most earnest desire of their hearts to feel, that they, too, have an interest in the common government, a pride in its greatness and glory, a joy in its prosperity, a destiny wrapped in its perpetuity, and in it an inheritance for their children, rich and priceless.

“The late popular manifestations point to these as possible, even probable, results in the near future. We think we see in this great revolution in which the people have thrown down and trampled upon their former leaders, the beginning of a real union, a new reconstruction, not devised by crafty, heartless and corrupt politicians, in the interest of party and based on revenge and sectional hate; not written in statute or covenant, but welling up from the hearts of the people, North, East, South and West, prompted by love of country, of liberty and of free government, and by a recognition of the perils which surround them, to which they have just been awaked—a reconstruction cemented by a broad and comprehensive patriotism, including all the States with all their people, which, forgetting the past, remembers only that we are now citizens of a common country, bound in a common destiny and menaced with a common danger. Such reconstruction means peace, recuperation, building up, fresh energy and renewed hopes of a bright future for the South, home-rule for all the States, honest constitutional government for the Union, and prosperity and common brotherhood for the people. While standing unyielding by the principles of government we believe to be correct, and maintaining inviolate the faith that is in us, we should put our feet upon every narrow and

sectional feeling, and embrace in our efforts and aspirations the glory and advancement of the whole country.”

These sentiments are peculiarly applicable to the political revolution of 1884, and seem to have been uttered with the inspirations of prophecy. The streak of light which he saw stretched along the political horizon in 1874, has spread itself over the national sky, and it is well that he occupies a position in which, as the representative of his people, he can place the seal of their devotion upon the happy sequences of the consummation. As a United States Senator he has been true and faithful to the interests of his party and his people, constant in his efforts to promote the public welfare, and able in the advocacy of the principles whose triumph has burnished the hopes and illuminated the prospects of the American Union.

His mental organization is of a high order and his professional learning is thorough. His arguments and decisions evince, both in exposition and research, the qualities of a profound lawyer and able judge, and are impressive of some of the most important features in Texas jurisprudence. Among these is his decision in the case of *Stroud v. Springfield*, 28 Texas, 649, in which he describes the necessary qualities and merits of ancient deeds, and the evidence required to establish old landmarks and boundaries of surveys. Old deeds and field notes of surveys must be free from suspicion, must come from the proper custody, and must have been acted upon, in order to give them a genuine character and the merit of evidence. These questions are discussed with great ability, and this decision should be studied and learned by every settler and land-owner in the State.

Viewed from whatever standpoint, in every sphere of his life, as governor, judge, senator or citizen, Senator Coke is one of the most eminent of Texans. As a lawyer and statesman he has but few superiors in the country, and as a patriot, none.

JAMES H. BELL.

James Hall Bell was born in the town of Columbia, Brazoria County, Texas, on the 21st of January, 1820. His father, Josiah H. Bell, was a native of Kentucky, and was one of the first of Austin's colonists. He enjoyed the highest confidence and esteem of the famous pioneer, and when Austin went to the City of Mexico in 1822 to obtain a confirmation of his empresario grant from the Mexican government, which had just thrown off the Spanish yoke, he left the affairs of the colony in the hands of Mr. Bell. During his long absence, which was constrained by the conflicting factions at the Mexican capital, the spirits of the colonists became greatly depressed, and in consequence of a general feeling of insecurity, many of them abandoned the country and returned to the States. But the devoted energy and firmness of Mr. Bell, who had also been appointed an alcalde by Governor Trespalacios, maintained the colonial organization until Austin's return, after being a year absent. He died in 1838.

James H. Bell was educated at Bardstown, Kentucky, where for several years he enjoyed excellent advantages, and on returning to Texas began the study of law in the office of William H. Jack, in Brazoria County. In 1843 he went to Cambridge University, Massachusetts, and completed his education in the law department of that institution.

In 1847 he entered upon the practice of his profession in Brazoria County, and in 1852 was elected judge of the District Court. He held this position until his election to the Supreme Bench in 1859, and won the reputation of being an efficient, just and able judge. He held the office

of associate justice of the Supreme Court until 1864, when, at the expiration of his term, he resumed his practice.

Judge Bell performed an eminent service for his people during the troubles which occurred upon the election of Governor Coke to succeed E. J. Davis. The latter called upon General Grant for aid, and invoked the presence of Federal troops to maintain himself in the gubernatorial chair. Judge Bell proceeded immediately to Washington, and stated to the authorities the true state of affairs, and in consequence of his reputation, the influence of his personal qualities, and the manifest sincerity and truth of the views he presented, the President declined to interfere.

During the last two or three years he has been engaged chiefly in mining operations in Mexico, and is at present in London for the purpose of promoting these enterprises.

As a lawyer Judge Bell is thorough and varied in his accomplishments. He is familiar with all the principles of legal science; and as a judge he was an excellent expositor of legal principles, quick to discover the true course of law and justice, and no less vigorous in pursuing it. These features eminently characterize his reported decisions, and their lucid determination of the questions they involve will always render them important and leading in the jurisprudence of the State. His personal attributes are no less marked than his professional. He is kind, courteous and social; and the same personal qualities which crowned with success his voluntary diplomacy at Washington in the interest of his people, assert themselves in the merited esteem of his friends, neighbors, and fellow-citizens.

A. H. WILLIE.

Asa Hoxie Willie, chief justice of the Supreme Court of Texas, is a native of Georgia, and was born in Wilkes County on the 11th day of October, 1829. His father, James Willie, was a native of Vermont, and his mother was a daughter of Asa Hoxie, a Quaker of Barnstable, Massachusetts. After the death of his father, in 1833, his nurture and training devolved entirely upon his mother, and his education depended upon her exertions and the prudent management of her limited means; but she was a woman of energy and determination and devoted herself to the task with all the fondness and fidelity of maternal affection and womanly virtue. With her his education began and she promoted it with untiring zeal and self-sacrificing exertion, not only in directing his intellectual development, but in cultivating the feelings, aspirations and sentiments which determined the qualities of his character. The history of distinguished men in every age of the world teems with tributes of gratitude and veneration to the influence and memory of noble mothers — the work accomplished by the hallowed benisons of maternal devotion, and Judge Willie owes his success in life to the same inspiring source.

He was educated at the academy at Washington, Georgia, and while the slender means of his mother would not permit her to give him the advantages of a collegiate course, he received the best education that an excellent high school could afford, and in 1846 removed to Texas and located in the family of his maternal uncle, Dr. Asa Hoxie, who resided near Independence, in Washington County. In 1847 he began the study of law in the office of his elder brother, James Willie, at Brenham, and in 1849 was admitted to the bar before he had attained the age of twenty-one years, by

authority of a special act of the Legislature, and commenced the practice of law in copartnership with his brother.

His thorough training and energy soon asserted themselves, he rose rapidly in his profession, and in August, 1852, was elected attorney for the Third Judicial District, which at that time comprised the counties of Washington, Burleson, Milam, Bell, McLennon, Falls, Limestone, Freestone, Lee, Robertson and Brazos, and at the expiration of his term resumed his general practice.

In 1857 he removed from Brenham to Austin, and performed the duties of Attorney-General, whilst his brother, who at that time held that office, was indexing the criminal codes and supervising their publication, a service to which he had been appointed by the Governor prior to his election. In 1858 he removed to Marshall, Texas, and formed a copartnership with Col. Alexander Pope, his sister's husband, which continued until he was promoted to the bench.

During the political agitation, which culminated in the civil war, his sympathies were strongly enlisted on the side assumed by his native and adopted State, and when hostilities began he promptly volunteered his services, and took a position on the staff of General Gregg, with whom he served until the death of that gallant officer.

In June, 1866, he was elected associate justice of the Supreme Court. The other members of the court, elected at the same time, were George F. More, Richard Coke, George W. Smith and S. P. Donley, all of whom were removed in 1867 by the military authority, which during that year was placed in command of all the departments of the State government. Judge Willie then removed to Galveston, and formed a copartnership with Judge T. F. Crosby, and afterwards with Judge C. L. Cleveland. On the recovery of the control of the State by the people in 1872, he was elected a representative at large for Texas in the Congress of the United States, and at the expiration of his term declined a re-election, and returned to his practice. In November, 1882, he was elected chief justice of the Supreme Court of Texas by the largest vote ever given to any candidate in the State.

While wearing the manners of an apparently cold and stern exterior, he is a kind-hearted, sympathetic man, and there are few men in Texas who have more devoted friends. This, together with his known ability, accounts for the hearty support which he has received for the most important positions, and the high office he now holds. He was married in 1859 to an estimable lady, Miss Bettie Johnson, of Brandon, Mississippi, a step-daughter of William C. Harper, a lawyer of that place, and has a large family of children.

With a strong mental organization, combined with great physical endurance, the former trained to the constant tension of intense study, and the latter cultured by a uniform moral regimen, Judge Willie is capable of great intellectual labor, and never wearies in his search for the proper solution of every question which calls for the exercise of his judgment. He loves his profession with the fervor of a devotee, and has vigorously employed a remarkable energy and industry in the attainment of a mastery of the great principles of law in all their bearing and application. He possesses all the qualities and characteristics of an excellent judge, and his decisions are of the highest order of judicial exposition. His arguments show that he invariably mastered the elements of his cases, both as to the law and the facts which compose their merits, before he went into their trial; and they evince another quality exemplary in the highest degree, and one which never fails in the end to win the confidence and respect of courts and juries and the highest laurels of success. He never urges a point of law which is not well taken and supported by authority and reason, and never asserts a fact that the evidence does not sustain.

These traits which gained him popularity and success at the bar, develope themselves on the bench in a sense of justice, candor and conscience, and a purely judicial treatment of a question, which constitute the highest qualities of a judge. As a lawyer he strikes straight and full in front at the crest of opposition, and as a judge, straight at the merits of the case. Untangling the webs of circum-

stance, he twines the cable of truth from the pure elements of law and fact; and while the grounds of all his opinions are clearly defined, many of them are models of logical reasoning.

His decisions are numerous, and many of them have largely shaped the present *status* of Texas jurisprudence. The following cases contain principles of first impression, and are selected on account of the ability of the opinions: —

G. H. & H. Railway Co. *v.* Allison, 59 Texas, 193 — A carrier undertaking to transport goods to a certain destination can not contract for a limitation of his responsibility to a portion of the route, and any deviation in the route or mode of conveyance from those specified in the agreement, made at any point during the transportation, will preclude him from the benefit of any stipulations against liability.

Schneider & Bro. *v.* Bray, *Ib.* 668 — Notwithstanding the principle that when property exempted from execution is voluntarily exchanged for a species which is not exempted, the exemption is lost, the beneficent object of the law in regard to homesteads can not thus be defeated, and one homestead may be exchanged for another and the exemption will attach to the newly acquired home.

Franco-Texas Land Co. *v.* Saigle, *Ib.* 339 — A charter granting to a corporation the right to *transact business* beyond the limits of the State creating it, confers the power of performing only such acts as are usually done through directors and agents, and not the capacity to exercise corporate functions. Hence, persons chosen as directors at an election held beyond the limits of the State which gave it existence are not *de jure* officers of the corporation. Neither are they *de facto* officers, for that quality can be derived only from a colorable right impaired by informality or irregularity in the appointment, otherwise the bold assertions of a mere usurper could not be questioned.

G. H. & S. A. Railway Co. *v.* Temple — An employe assumes all the risks ordinarily incident to his business, and if he goes into service or continues in it knowing that the nature or instrumentalities of his labor are unsafe and dan-

gerous, the employer is not liable for any injuries he may receive; but if the danger from defective machinery is not apparent the master is liable.

Hildebrand v. McMahan, *Ib.* 450 — The constitution vests in the District Courts exclusive jurisdiction over the enforcement of all liens created by the act of the parties, but not over those effected by operation of law and the foreclosure of which follows as a matter of right without the intervention of a verdict. Over the latter justices of the peace have concurrent power within the limits of their jurisdiction.

T. & P. Railway Co. v. McAllister, *Ib.* 349 — A petition to remove a cause from the District Court of a State to the Circuit Court of the United States possesses the character of a plea, and the State court has the power to determine the sufficiency of its merits and refuse it, if found inadequate and a mere pretext for delay or change of jurisdiction.

Erwin v. Blanks, 60 Texas, 583 — The conflicting clauses in the Constitution which fix the same amount as the maximum of the jurisdiction of the County Court and the minimum of the jurisdiction of the District Court vest the two courts with concurrent jurisdiction over the common amount unless it be involved in the trial of the right of property levied on by a writ of execution, sequestration or attachment; in this case the jurisdiction is specially conferred upon the District Court.

Carter and Rusk v. Conner et al. *Ib.* 52. — Marital relations in Texas have been assimilated in many respects to ordinary partnerships, and a suit against the survivor may subject community property to the payment of community debts without making the heirs of the deceased husband, or wife, parties to the action.

Splawn v. Chew, *Ib.* 532 — When a person insures his life for the benefit of other persons, he has no power to assign the policy, or change the beneficiaries, unless he has contracted with the insurer for the reservation of that right; in that case the policy will be interpreted as other authorized contracts, and the law will respect the exercise of the reserved control.

Ezell v. Dodson, *Ib.* 331 — A married woman can not by virtue of living separate and apart from her husband and his refusal to join her, bring an action to recover damages for an assault and battery committed upon her during coverture. The only instance in which she can maintain an action for community property without the joinder of her husband is when he has abandoned her and left her dependent upon that property for support.

Jones v. Jones, *Ib.* 455 — In Texas the District Courts can decree divorces between *bona fide* residents for causes arising beyond the limits of the State, and it is not necessary that the acts should be alleged with the certainty of an indictment, notice of the charges being sufficient; and the laws of Texas hold an imputation of unchastity to be a sufficient cruelty to justify a dissolution of the bonds of matrimony, justly considering wounds affecting the mind and character to be more intolerable than those inflicted upon the person.

McCue v. Blair, *Ib.* 169 — If a person whose mental faculties are suspended by intoxication be induced to swallow spirituous liquors to such excess as to endanger his life, the persons taking advantage of his helpless condition and mental darkness and imposing the draught upon him must answer to him in damages for the injury that ensues, and to his family if his death should be the result.

Seligson & Co. v. Brown & Brown, 61 Texas, 180 — An insolvent debtor can not exchange property liable to be subjected to the payment of the claims of his creditors for that which is beyond their reach, and thus in place of certainty substitute a mere chance payment depending upon his own discretion and convenience, for that would destroy all check upon fraudulent conveyances.

McKamey v. Thorp et al., *Ib.* 648 — When property is purchased with money belonging to the wife, and the conveyance is not made for her use and benefit, and contains no indication of her ownership, the legal title is lodged in the community of herself and husband, but a resulting trust arises in her favor, and she is the equitable owner of the property. The registration laws which render all un-

recorded conveyances void as against subsequent purchasers for value without notice, do not apply to resulting trusts, as this equity can not be spread upon the record, and the equity of the wife is not affected by an execution sale under a judgment against the husband, although the purchaser had no notice of the resulting trust.

Willis v. Missouri Pacific Railway Company, *Ib.* 432 — A State can not give to its laws an extra-territorial effect. When an action is transitory and is based on personal injuries recognized by universal law it may be brought wherever the aggressor is found, but statutory actions must be brought in the State in which the statute exists and the injury occurred.

THOMAS J. DEVINE.

Thomas J. Devine was born of Irish parentage in Halifax, Nova Scotia, on the 28th of February, 1820. His early opportunities for an education were liberal, and in addition to his English studies he acquired considerable proficiency in the Latin and French languages; but he was thrown in early life upon his own resources, and when but fifteen years of age emigrated to Florida and engaged as a clerk in a mercantile house in Tallahassee; but his genius and aspirations found no congenialty in the mental restraints and fettering routine of a life of trade. The cravings of his mind and the soaring flights of his youthful ambition impelled his exertions to reach a more compatible sphere, and, in 1838, he began the study of law in the office of Truxton Davis, a prominent lawyer of Woodville, Mississippi. In 1840 he went to Lexington, Kentucky, where he continued his studies and attended lectures in the law department of Transylvania University, in which he graduated in 1843 and obtained his license to practice from the Supreme Court of Kentucky. During the same year he emigrated to Texas and located at La Grange, in Fayette County, in a society composed of heterogeneous elements, and exposed to Mexican and Indian depredations. This unsettled state of affairs was repugnant to his cultured taste and studious habits, and he soon afterwards removed to San Antonio, where he established his law office, and has ever since resided there. Here he entered at once upon a successful professional career, and soon acquired a high reputation as an able and thorough lawyer. In 1844 he was elected city attorney, and held that office by successive re-election until 1851, when he was elected district judge of the Bexar district. He was

re-elected to the bench in 1856, and held his position until the outbreak of the civil war. He was a leading member of the Texas Secession Convention of 1861, and was appointed one of the committee of public safety to confer with General Twiggs, the commander of the United States troops in Texas, and to demand the surrender of all government arms, ammunition and military stores, and the immediate removal of the Federal troops from the State. This, in conjunction with two other gentlemen of the committee, he accomplished with the skill of a thorough diplomatist, and received the commendation and thanks of the Convention. Being an ardent devotee and supporter of the Southern cause, and a lawyer of eminent ability, he was soon afterwards appointed Confederate States judge for the Western District of Texas. The functions of this office, though necessarily limited in extent and application during the time of war, he performed with the utmost fidelity, and with a view of the importance of putting the machinery of the new court in proper motion. In 1863 his admirable qualities of statesmanship and knowledge of international law was again called into requisition. At the request of General E. Kirby Smith, he proceeded to the City of Mexico, and succeeded in arranging amicably the threatened troubles between the Mexican government and the Confederate States. In 1864 there was great dissatisfaction in Texas, in consequence of the conscript law and the embargo laid by the Confederate government upon the trade between Texas and Mexico, and serious troubles were threatening to arise between the government of the State and the Confederacy, but the patriotism, ability and pacific qualities of Judge Devine arrested all evil, and, having promptly repaired to General Smith's headquarters, in Arkansas, he arranged the whole matter amicably and satisfactorily to all parties.

Thus as a judge and peace-maker this good man united in his person and in his office, the noblest qualities of a citizen and patriot, and rendered to his country the happiest of all services — the promotion of unity and concord, and

the concentration of its powers and energies against the common enemy.

At the termination of the war, he saw no hope for his country through the clouds which settled over it, and took up his abode in Mexico; but Texas was his home, to her he owed all that he was, or had been, and his heart was chained to her destiny. He returned to San Antonio within a few months; but his known ability, prominence and influence as a Southerner, drew upon him the shafts of revenge, and he was arrested by the Federal authorities and incarcerated in Fort Jackson, at the mouth of the Mississippi, where he was confined four months. He was finally released by his giving bond that he would confine his residence to San Antonio, a duress and restraint which was virtually an imprisonment. Here vengeance still pursued him and he was twice indicted for high treason, being the only person in the South, except Mr. Jefferson Davis, who received that notoriety. But having quietly, yet defiantly, resumed the practice of his profession, he placidly awaited the abatement of the storm, and watched with anxious gaze the social and political wreck which it left in its pathway.

In 1873 he was appointed by Governor Coke an associate justice of the Supreme Court of Texas, but after a short but eminent career upon the bench he found that the duties of the bar, which he had so long cultivated and cherished, were more congenial to his taste as well as far more remunerative, and in 1875 he resigned and returned to his practice in San Antonio, which he has since pursued with vigor and uninterrupted devotion; and with the exception of being a prominent candidate for Governor in 1878, he has declined to permit his name to be used in connection with any political office.

Judge Devine is considered one of the ablest lawyers at the Texas bar. He is a man of intellectual vigor and superior mental endowments, and while he possesses much of the humorous vivacity and spontaneous repartee characteristic of his parentage and the race from which he sprung, candor and sincerity are ruling traits of his character. He

is patient and thorough in his investigations and an excellent legal counselor. His uniform courtesy and placid disposition and his aptness on proper occasions to adorn with good-natured jest the dull and monotonous features of legal argument render him an engaging advocate, and give him great power before a jury, while his oratory, embellished with the most captivating qualities, often rises to the highest plain of elocution.

As a judge his decisions are characterized by an independence of judgment, and a freedom from the restraints of doubtful precedent, that commend them to the practitioner as the emanations of profound learning, thorough research, and conscientious conviction. He held the scales of justice in even balance, and no feature of wrong, however speciously attired, could disturb the equitable poise. His judgments fixed upon the firm basis of law and right yielded only to the dictates of mercy.

In private life Judge Devine possesses the noblest qualities. Kind, charitable and public-spirited, he is always ready to respond to every meritorious demand as a friend, as a neighbor and as a citizen.

JOHN IRELAND.

The distinguished subject of this sketch was born of yeoman parentage, in Hart County, Kentucky, on the 1st of January, 1827. His educational advantages were confined to the common schools of the country; but, actuated by a spirit of determination and self-reliance which buoyed him above the restraints and gyves of circumstance, his endeavors were fixed upon the purpose of achieving an honorable place among men; and bursting the trammels of his early youth, he sought to obtain in the realities of life that knowledge of which his school facilities had afforded him but a thirsting taste.

In 1847 he was appointed deputy sheriff of Hart County, and about a year afterwards was elected constable, which position he held for three years. The knowledge of process and legal business, which the duties of these offices afforded him, directed his ambition to the bar, and in 1851 he began the study of law in the office of Robert D. Murray and Henry C. Wood, at Mumfordsville. He at once impressed into the service of his efforts those habits of close application and patient industry which have attended him through life, which have constructed the sure steps of his advancement and formed the sesame of his great success. So constant and thorough was his progress in mastering the general principles of the common law that in scarcely more than one year he was admitted to the bar and entered upon his practice; but casting about for a new field and more inviting prospects, he was attracted by the glittering future and allurements of the rising empire of the Southwest, and in 1853 removed to Texas and settled in Seguin, where he began the erection of his fame, and which has ever since been his unofficial home. Here his sterling qual-



Yours Truly
Geo. Ireland

ities were recognized by his fellow-citizens, and in 1858 he was elected mayor of the town. At the approach of the foreboding clouds of the civil war, he ardently espoused the cause of his section and State, and favored the prompt resumption of its sovereignty, and its withdrawal from the Union. He was a member of the Constitutional Convention of 1861, and as soon as the *status* of political affairs were settled in his State he enlisted as a private in the volunteer army of the Confederacy. The same purpose and devotion to duty which had characterized his professional career marked him as an efficient soldier and invited promotion. He was made successively captain, major and lieutenant-colonel, and was an officer of high standing. His services extended throughout the campaigns of the Trans-Mississippi Department, and at the close of the war he returned to the practice of law at Seguin.

In 1866 he was a member of the convention assembled to form a Constitution for the State in conformity with the Johnson policy of reconstruction, and was soon after elected judge of his judicial district, but was removed on the usurpation of military power in 1867. In 1873 he served as a member of the House in the Thirteenth Legislature, and in the fourteenth he was a member of the Senate. In 1875 he was appointed associate justice of the Supreme Court, but was retired by the new Constitution of 1876, which required the court to consist of only three judges. His decisions are found in the forty-fourth and forty-fifth volumes of Texas Reports. His assiduous habits and fondness for close analytical investigation, his natural inquisitiveness of mind, firm and well grounded convictions through legal training, and ample resources of both principle and precedent, made him an excellent Supreme judge, and his decisions manifest a steady and profound search for truth and justice. His opinion in *Lewis v. Aylett*, 45 Texas, 190, first settled the principle in Texas jurisprudence that real estate can not pass by a nuncupative will. In this case he traces the power of devising real estate from its origin in the Statute of Uses, through its enlargement by the abolition of feudal tenures, when the

custom of making nuncupative wills was engrafted upon it by necessity, to which it had always been restricted. He showed that there was nothing in the jurisprudence of Texas that warranted the extension of the power of nuncupative devise to real property under the allodial tenures of the State, and in regard to the competency of devisees to establish a verbal devise of personal estate he adds:—

“Every dictate of humanity, and the daily lessons of life warn and teach us of the folly and impropriety of placing not only the fortunes, but the lives of the sick, aged and afflicted at the mercy and avarice of the corrupt and the vicious. That a code of laws should allow devisees to go before a clerk or judge on an *ex parte* proceeding, and prove a verbal will giving to strangers an estate, leaving kindred and family without provision, can not be readily admitted, and it would deserve universal condemnation.”

So confirmed and justly recognized was his character for integrity, executive ability and perfect devotion to the interests of the State, that, in 1882, he was elected Governor of Texas by more than one hundred thousand majority of the popular vote. His advent to the executive office was at a period of comparative prosperity, when the spirit and pride of the people were ardently enlisted for the advancement of the various public institutions of the State, in which he also shared, and the succeeding Legislature made large appropriations for that purpose, which he carried out to the letter. This caused a deficiency in the treasury at the close of his first administration, which was seized upon by his opponents, who were actuated by purposes chiefly of a personal and selfish character, to defeat his re-election. The free grass system had resulted in the enclosure of large bodies of land by the leading stockmen of the State, often enveloping and shutting in the smaller herdsmen, and excluding them from access to the water courses. This produced an organized system of fence cutting, which was extended to lawful owners as well as to intruders upon the public lands, and so outrageous and universal had grown this evil, that the Governor convened an extra session of the Legislature in January, 1884, to

devise a remedy for this species of lawlessness. Stringent and efficient laws were enacted for its suppression, which the Governor executed with his characteristic promptness and vigor; and even this was sought to be used to his prejudice and to impair his popularity. But the innate justice of the people approved and appreciated alike his motives and his official acts, and at the Houston convention in August, 1884, he was unanimously re-nominated, and was re-elected by a majority vote of more than one hundred thousand.

It has been truly said that there are times when even the virtues of men provoke hostility; as Tacitus expresses it, '*nec minus periculum ex magna favia quam ex malo.*' But Governor Ireland has never once swerved from his principles or the line of his conscious rectitude to conciliate his enemies or to soften opposition. But with motives based upon principle, not policy, he has at all times boldly proclaimed his views, and fearlessly practiced the precepts of his conviction and the dictates of his judgment. He abides that public appreciation which never fails to do justice to noble ends attained by pure motives and upright means.

He is a man of rare self-respecting dignity, and possesses the virtues of steady independence and sober reliance, which never spring from a commonplace mind. Starting in life amid circumstances by which thousands of our brightest geniuses have been overwhelmed, he peered through the clouds of obscurity, and having once caught a glimpse of possibility, he fixed an unswerving aim upon success, and in the prime of life his sterling traits of character bear him onward in the achievement of usefulness and merit. His career has been one of incessant labor; at the bar in sedulously pursuing the interests of his clients, in the thorough preparation of his cases, in the study of both sides of every question—the possibilities of defeat as well as the possibilities of success; on the bench, in the indefatigable search for the true principles of justice, and in the executive chair, in conscientious efforts to perform the duties of his office in the promotion of the public weal.

He has an abiding faith and lofty pride in the great destiny of his State, and his official course, while unwarped by the demands of faction, has sought to harmonize the varied and often conflicting interests of the great Commonwealth over which he presides.

Governor Ireland is a thorough Democrat of the pure Jeffersonian school; firm, conservative and honest in his convictions, he throws the open banner of his principles to the public view, and while yielding full accord to the political changes really effected by the civil war, he is tenderly mindful of the rights of his State, and has cherished a ready endeavor to promote its welfare in spite of faction and independent of Federal remissness.

The defective reciprocity in the surrender of criminals in the new treaty between the United States and the Republic of Mexico has subjected the whole western border of Texas to the incursions of thieves and murderers from the Mexican States bordering upon the Rio Grande. This has occasioned great trouble to his administration, and upon the failure of strenuous efforts to obtain Federal protection, he has asserted his intention of preventing these evils by the militia of the State. But the change of principles and policy of the general government effected by the advent of a Democratic administration, bearing a juster regard for the rights and welfare of all sections of the country, will doubtlessly relieve him from this necessity.

With these abnormal exceptions, so firm and vigorous has been his enforcement of the laws, that at no time has crime been less prevalent, life and property safer, or the general tenor of society more even and uniform in the pursuit of happiness in Texas than during his administration.

Taught from his earliest youth in the school of self-reliance and independent action, Governor Ireland keeps his own counsel and panders to no element of society. He is a man of iron will, and in his official capacity acknowledges no suzerainty but the requirements of law, the demands of duty, the dictates of his own judgment and the welfare of the State. His manners are dignified and reserved, yet he is generous and kind in his disposition, and

a true friend to those who gain his respect and confidence. There is nothing ostentatious or artificial in his character; but, solid and practical in his intellectual composition, his conduct is impressed with the qualities of his mind, and he preserves a steady equanimity in both.

To say that he is devoid of strong prejudices would be an attempt to destroy the equilibrium in which nature poises her endowments; but he lives upon an official plane too high for their exercise, and the dormancy of these is but the counterpart of the active traits which shape and model his character into an orb of usefulness and eminence as a lawyer, statesman and citizen.

His qualities eminently fit him for the times and events of his administration, during which, the troubles alluded to and the lawlessness of the border, have been entirely suppressed. He has administered the affairs of the State with a well-defined grasp and vigor. He is a man who cares little for exterior show or ceremonious effect, and at his second inauguration his address, which he read from a small sheet of paper, was in dignified and modest contrast with the vain display which modern usage has introduced into installment exercises. But Texas has no statesman of sounder judgment, or of more fidelity and fortitude in the promotion and protection of its interests and rights.

Governor Ireland has been twice married. His first wife was Mrs. Matilda W. Fanelott, whom he wedded in 1854, and who lived but a short time. He was again married in 1857 to Miss Anna W. Penn, of Mississippi, a lady whose noble qualities and accomplishments embellish his official life and adorn her station.

ROBERT S. GOULD.

Robert Simonton Gould was born in Iredell County, North Carolina, on the 16th of December, 1826. His father, Daniel Gould, was a native of New Hampshire, and a Presbyterian minister. His mother, whose maiden name was Zilpha M. Simonton, was a native of North Carolina, and of Scotch-Irish parentage. His father died when he was seven years of age, and his mother soon afterwards removed to Alabama, and settled at Tuscaloosa with the view of giving him and a younger brother the advantages afforded by the university of that State, and to the accomplishment of this object she devoted all her energies. She kept a boarding-house for many years, and not only succeeded in giving her two sons a collegiate education, but aided in educating the children of her daughters, presenting a beautiful commentary upon the influence and power of a noble woman for the accomplishment of good and the objects of her heart's desire, and to her self-sacrificing labors and the Christian example the subject of this sketch is largely indebted for the success and attainments of his after life.

Robert Gould was placed in the University of Alabama at the age of fourteen years, and graduated in 1844, when he had just reached his eighteenth year. In 1845 he began the study of law, but was soon afterwards elected tutor of mathematics in the university, and held that position three years and a half, continuing at the same time the study of law as his duties afforded opportunity. In 1849 he obtained license to practice, and immediately opened an office at Macon, Mississippi, in copartnership with Ex-Governor J. L. Martin. In the fall of 1850 he removed to Texas

and located at Centerville, in Leon County, where he soon attained a prominent position at the bar.

In 1853 he was elected district attorney of the Thirteenth Judicial District, and having served two terms in this office, declined re-election, and returned to his general practice. In 1855 he was married to Miss Lenna Barnes, a native of Marengo County, Alabama, and a lady of superb qualities and accomplishments.

He was a member of the Secession Convention of 1861, and was soon afterwards elected judge of the Thirteenth District, but he resigned this office early in 1862, and entered the Confederate service as captain of a company. He was soon afterwards elected major of a battalion, known as Gould's Battalion, which formed a part of Randall's brigade of Walker's division. He participated in the battles of Mansfield, Pleasant Hill and Jenkins' Ferry, in the last of which he was wounded, and had his horse killed under him. His battalion was afterwards joined to another and formed into a regiment, of which he was made colonel.

When the war closed he returned to his practice of law, and in 1866 was again elected judge of his district, but was removed in 1867 by order of the military authority, and considering the act illegal, he did not at once resume his practice, but resided two years in retirement on a farm. In 1870 he removed to Galveston, and in May, 1874, was appointed by Governor Coke associate justice of the Supreme Court, to fill a vacancy occasioned by the resignation of Judge Peter W. Gray, and was elected to the same position under the Constitution of 1876 establishing an elective judiciary. In 1881 he was appointed chief justice of the State, to fill a vacancy caused by the resignation of Judge George F. Moore, and was a candidate before the convention of 1882 for nomination to that position, but he was unsuccessful.

As a lawyer the success of Judge Gould is due to his habits of profound and painstaking investigation, and to the careful and accurate preparation of his cases. His knowledge of law is scientific as well as practical, and he thoroughly comprehends its reason and philosophy, as well

as its application. As a judge, his career was characterized by a steady, faithful and conscientious effort to discharge his duty, and dispense justice with a uniform and impartial hand. Among his most important and best delivered opinions is his dissenting opinion in *Ex parte Towles*, 48 Texas, 413. In this case it was held by Chief Justice Roberts that the Constitution gives to the District Courts no power, nor to the Legislature any authority to invest them with the power to try appeals of contested elections from the County Courts, as they have not, as under the old Constitution, "a general superintendence and control over inferior tribunals." And that they can have no constitutional jurisdiction unless the contesting voter can show that he has a pecuniary interest involved amounting to the value of five hundred dollars, and a legal *status* capable of a judgment enforceable by execution.

As to the unconstitutionality of the act granting such appeals, Judge Gould held that the determination of contested elections was not a matter of ordinary legal administration, and like other special and unforeseen cases, is embraced by the spirit of the Constitution in its grants of jurisprudence, although it is not named in express terms in the allotment of judicial powers; and that as to the want of proper parties or legal subject-matter, the objection was not more forcible than in actions against the State, or proceedings *in rem* in admiralty or under the Texas stock law; and that if the Legislature may confer special jurisdiction upon "such other courts as may be established by law," it surely can confer the jurisdiction of contested elections upon those already established.

Before his term upon the bench had expired, Judge Gould was, without solicitation on his part, elected professor in the law department of the University of Texas, which position he now holds; and, under the joint supervision of ex-Governor Roberts and him, the excellency of the law department of that institution invites attention from all parts of the country.

JOHN W. STAYTON.

John William Stayton, an associate justice of the Supreme Court of Texas, was born in Washington County, Ky., on the 24th of December, 1830. His father, Robert G. Stayton, and his mother, whose maiden name was Harriett Pirtle, were both natives of that State, of which their ancestors were settlers.

In 1832 he removed with his parents to the southwest portion of the State, which was at that time an unsettled country. Having lost his father two years afterwards, his training devolved solely upon his mother, who was a woman of good culture and more than ordinary intellectual endowments, and who gave him the best educational advantages the new country afforded. After her death, which occurred when he was but fourteen years of age, he resided on a farm with a relative until he was seventeen years old, during which time he performed farm labor through the summer and attended the country schools in the autumn and winter.

Being sufficiently advanced he desired at this age to enter college, but his guardian did not sanction his wishes, thinking it best not to expend the limited means of his ward in this manner. In consequence of which he declined to remain longer on the farm, and at his own volition served an apprenticeship at the blacksmith's trade until he was of age. During that time he continued a course of private study and general reading, which was perhaps of as much real advantage to him as would have been the collegiate course which he desired to pursue. Having attained the age of twenty-one years, he began a more extensive course of studies, which he continued until the twenty-fourth year of his age, when, without an instructor, he began the study of law, which, prompted by the often expressed wish of his mother

and by his admiration for the distinguished men of the profession, had been his intention from early life. Having read the usual course and that prescribed in the University of Louisville, he afterwards entered the law department of that institution and graduated in March, 1856, with the degree of Bachelor of Laws. In April of the same year he was married to Miss Jennie Weldon, also of Kentucky, and to this noble lady he is greatly indebted for his remarkable success in life.

In October, 1856, he emigrated to Texas and was admitted to the bar of this State at La Grange, where he resided until the fall of 1857, and then moved further west and settled in Atascosa County. His steady habits, his close application, faithful devotion to the interest of his clients, his uniform consistency of life and kind and amiable disposition gained him both personal and professional popularity, and his advancement was rapid. In 1858 he was elected district-attorney of the Eighteenth Judicial District and was re-elected to the same office in 1860, and served until the end of the term for which he was elected.

He had never taken any active part in political affairs, though feeling a deep interest in the great events which in the last days of 1860 cast their ominous shadows upon the national horizon. He was a staunch Southerner in his views and sentiments, and at the expiration of his second term as district-attorney, having removed his family to Sutherland's Springs, in Wilson County, he entered the Confederate service as a private, but was soon afterwards promoted to a captaincy, and remained in the army until the end of the war.

When the great issue was decided against his section, he accepted its natural sequences with the fidelity of a good citizen and with the determination of an unswerving devotion to law, order and civic duty, and, having settled at Clinton, in De Witt County, he engaged in teaching school in order to support his family until the courts should be reopened. In 1866 he resumed the practice of law in copartnership with Samuel C. Lackey. In 1871 he removed to Victoria, and formed a copartnership with A. H. Phil-

lips, and this place has continued since then to be his home.

His practice was now large and remunerative, and included all classes of legal business. He had as much as he could do, and his energy and dispatch were taxed to the utmost to perform the duties entailed by his extensive patronage. He permitted no abstraction of his attention from his professional labors, and, with the exception of serving as a member of the Constitutional Convention of 1875, persistently rejected every overture of political preferment. In November, 1881, he was appointed by Governor Roberts an associate justice of the Supreme Court of Texas, and, in 1882, was elected to the same position by the people.

It has been said that the personal weight of no one can be depicted in the simple narrative of his achievements, and that the largest part of genius is latent. This silent and subtle quality whose impulses guide the actions of men, but whose counsels they can not divulge, constitutes essentially that which we call character. Achievement may obtain glory and a reputation among men, but character alone can confer the colors of noble purpose, and inspire the attainment of noble ends by noble means. To this principle Judge Stayton owes his success, and it may be truly said of him, as Sir James Mackintosh said of Mr. Grattan, "the purity of his life is the brightness of his glory."

His career upon the bench has been full of efficiency and faithful service, adorned with every feature which ability, uprightness and devotion can impress. His opinions bear the marks of indefatigable research, a conscientious and unswerving pursuit of law and justice, and are always well supported by reason, statute and precedent. Modest and retired in his deportment and manner of life, he detests notoriety, and shrinks even from the voice of approbation. But the records of the court, the confidence reposed in his integrity, and the esteem in which he is universally held by the Texas bar, proclaim at the same time his merits as a judge and his worth as a man. His opinions are numerous.

They are always clear, concise and direct, and leave no doubt as to the import of fact or the true bearing of principle. The following cases eminently exemplify the judicial traits which the author has endeavored to describe, and are leading adjudications in the State of some of the most intricate and important questions that can affect society :—

Statutory assignments, under the new statute — *Blum v. Wellermuck*, 56 Texas, 81; *Blum v. Welborne*, 58 Texas, 157; *Denaho v. Tish Bros. & Co.*, *Ib.* 165; *Coffin v. Douglass*, 61 Texas, 406; *Keating v. Vaughn*, *Ib.* 518.

Attachment, levy in, how made; constructive delivery, 57 Texas, 91; affidavit for, 56 Texas, 423.

Application of payments between the State and tax collectors, 57 Texas, 185; between parties, 60 Texas, 387.

Community property, what constitutes it, 57 Texas, 37. Rights of the survivor as to the homestead, *Ib.* 670. Powers and duties of the survivor and the rights of a purchaser, 60 Texas, 96, and 61 Texas, 69.

Actions under the statutes for injuries resulting in death. By the mother, 57 Texas, 491; by the wife, 59 Texas, 435; by the father, want of consent, 60 Texas, 397; by the wife, where the train causing the death of the husband was in charge of employes of the railroad company, but operated for contractors, 61 Texas, 527.

Condemnation of land for railway, who must institute proceedings under the statute; rights of land owner, 59 Texas, 326.

Construction of constitutions and statutes, exemptions from taxation, *Ib.* 654; statute of mills, manufacture, 60 Texas, 230; validating informal acknowledgments, *Ib.* 360; invalidating land locations, *Ib.* 487; days of grace, 61 Texas, 437.

Duties of officers and their right to fees—District and county attorneys, 57 Texas, 307, and 56 Texas, 385; fraudulent trusts, *Ib.* 110.

Homestead, when lost as a place of business, 57 Texas, 674; when lost as a home, 56 Texas, 315; limitation of, 61 Texas, 220; on property held by tenants in common, 58 Texas, 211; abandonment, part, 59 Texas, 32; right of wife

to recover, 60 Texas, 209 and 235; contract to refuse the use of, 61 Texas, 233.

Injunction, judgment may be rendered on dissolution of, practice, 57 Texas, 129.

Joinder of parties and causes of action, opinion on rehearing, 58 Texas, 191.

Land law; rights of purchaser when patent has not been issued, 59 Texas, 427; purchaser of school lands, 60 Texas, 61; illegal location, 61 Texas, 629; mistake and accident, *Ib.* 665.

Municipal taxation; local assessment, when valid, 56 Texas, 522; payment of, under protest, *Ib.* 486.

City taxing its interest in property of which it is a part owner, but which is controlled by another corporation, 5 *Texas Law Review*, 117.

Liability of master to servant, his duty to warn an inexperienced employe of unseen danger, 56 Texas, 301; who represents the master, defect in machinery, negligence in the employment or retention of servants, 58 Texas, 277; when the danger is known to the servant, 59 Texas, 10.

Municipal indebtedness, authority to contract, payment, 58 Texas, 463.

Insurance, usage, agents, 56 Texas, 234, and 59 Texas, 507; to whom the benefit of insurance accrues, *Ib.* 674.

Illegal contracts, 60 Texas, 379.

Negligence, of parents, can not be imputed to an infant, 59 Texas, 64.

Notice; whether a promise can be notice, 60 Texas, 315.

Nuisance, owner of property liable for, 61 Texas, 133; when an agent is liable for, *Ib.* 177.

Negotiable interest, when it may be held as collateral security, *Ib.* 365.

Measure of damages, proximate cause, *Ib.* 345.

Jurisdiction, county boundaries, 58 Texas, 228; of County Court over guardians, bond after discharge, *Ib.* 554; of District Court over injunctions in cases involving less than five hundred dollars, *Ib.* 616; of contested elections, 60 Texas, 46; of probate of wills, *Ib.* 46.

Lis pendens, writ of error, 60 Texas, 556.

Stoppage *in transitu*, *Ib.* 278.

Testament, adoption, under the Spanish law, ancient instruments, 61 Texas, 61.

Liability of municipal corporations for damages for injuries resulting from neglect. *Posneimski v. City of Galveston*, 62 Texas.

Liability of railway company for injuries arising from neglect of receiver while the road in his hands. *Ryan v. I. & G. N. R. R. Co.*, *Ib.*, and *Hicks v. I. & G. N. R. R. Co.*, *Ib.*

Separate property of married woman, resulting trust, registration, liens upon, 60 Texas, 112.

Wills, powers, construction of, 62 Texas, 1.

In the beginning of the canvass of 1884 the people of the Seventh District desired that he should represent them in the Congress of the United States, and, while he had a distaste for political office and was devoted to his judicial duties, so ardent was the manifestation of this wish of the people that it was thought he would accept the nomination. This elicited the following communication from the bar, and his reply, as substantially published in the *Austin Statesman*:—

AUSTIN, TEXAS, June 4, 1884.

Hon. John W. Stayton, Austin, Texas—

SIR: The undersigned, members of the bar, now in Austin during the session of the Supreme Court, believe we utter the general desire of the bar of the State in respectfully requesting you not to resign your position as supreme judge of Texas in order to represent the district in which you reside in Congress. This request is made in view of what seems the general desire in your district that you shall become a candidate. We appreciate the anxiety of your local constituents that you shall go to Congress, but we respectfully suggest that you represent, as supreme judge, the entire State in a higher sphere of usefulness, and we hope you will agree with us in the belief that your highest

duty is to the people and the bar of the entire State, who have already elected you.

M. R. STRINGFELLOW,	GEORGE W. RUSS,
T. T. GAMMAGE,	L. H. VERNY,
ALVIN C. OWSLEY,	GEORGE L. HILL,
CHARLES R. GIBSON,	B. R. WEBB,
J. H. ROBERTSON,	B. H. RICE,
J. M. HARTFIELD,	L. J. STOREY,
C. EDMUNDSON,	DUDLEY G. WOOTEN,
Z. T. FULMORE,	JAMES R. DAVIS,
BETHEL COOPWOOD,	DANIEL GETTINS,
H. E. SHELLEY,	JOHN B. RECTOR,
W. J. MONTGOMERY,	T. A. THOMSON,
W. M. BROWN,	W. A. BLACKBURN,
JAMES A. MUIR,	J. W. CARTWRIGHT,
J. W. LAWRENCE,	E. T. MOORE,
GARDNER RUGGLES,	A. H. GRAHAM,
R. H. WARD,	T. E. HAMMOND,
D. G. CHALMERS,	I. G. SEARCY,
S. A. POSEY,	JAMES B. GOFF,
J. M. MORPHIS,	W. D. WILLIAMS,
FRED. CARLETON,	A. J. PEELER,
A. M. JACKSON,	A. M. JACKSON, JR.,
W. M. WALTON,	R. J. HILL,
N. S. WALTON,	G. S. WALTON,
T. S. MAXEY,	S. R. FISHER,
H. D. PRENDERGAST,	A. W. TERRELL,
OSCEOLA ARCHER,	F. G. MORRIS,
C. D. JOHNS,	JOHN W. ROBERTSON,
D. W. DOOM,	A. S. WALKER,
N. P. JACKSON,	N. G. SHELLEY,
E. B. HANCOCK,	DAVID SHEEKS,
D. G. SMITH,	JAMES H. BURTS,

J. W. BAINES.

To this Judge Stayton replied that the subject had given him much concern, as, contrary to his oft-repeated desire, he could not close his eyes to the fact that it was the wish of many friends that he should become a candidate for

Congress in the Seventh District. He realized the right of the people to have the services of any citizen, and it had been a difficult thing to determine his duty in the premises. The people of the Seventh District had bestowed many kindnesses upon him, and, were he not already in the service of the State, he should deem it his duty to sink his own personal desires and preferences, and accept a nomination for Congress if tendered by the people. Having accepted another position at the hands of the people, he felt that he was under an implied obligation to hold that office and discharge its duties to the best of his ability. He had not encouraged the association of his name with the nomination, but had said frankly that if he could see clearly that his services were essential to the welfare of the district he might possibly consent to become a candidate, at the same time requesting that his name be not urged before the people. He had never believed the services of any one man to be essential to the welfare of the Seventh District. There were those who could do more effectual service in Congress than he. He regretted that his name had been mentioned for the place, but returned thanks to those unselfish friends who had so complimented him. He felt it his duty to the people and himself to state that he could not accept a nomination for Congress, in order that his candidacy might not be expected, and that others who might be willing to accept the place might be entirely unembarrassed. He closed by thanking the members of the bar for their kind expressions of confidence and esteem.

CHARLES S. WEST.

It will be observed in this work that the State of South Carolina has furnished many ornaments to the Bench and Bar of Texas. The patriotism, love of liberty, and heroic spirit of the young Republic and State were congenial to the sentiments which the nurseries of that State inspired in the minds of genius and ambition, and many of its sons cast their lot early in life with the destinies of the Lone Star; among these were Rusk, Hemphill, Lipscomb, the two Jacks, Roberts, Brewster, and the subject of this sketch; men who largely shaped the proud career of Texas and adorned and elevated its jurisprudence.

Charles Sherman West, one of the associate justices of the Supreme Court of Texas, was born in Camden, South Carolina, on the 24th day of September, 1829. Here his father, John C. West, a native of North Carolina, long lived a respected and honored citizen, and died in 1855. He served two terms as sheriff of Kershaw District, and was for many years teller in the old bank of Camden. His mother, Nancy Clark Eccles, who was connected with the Thorntons, Eccles, Clarks, and other old Carolina families, was educated in the then famous Moravian School at Salem, North Carolina, and was a lady of literary taste and superior culture. She was often a contributor to the *Augusta Mirror*, and prided herself in efforts to establish a State literature that would foster and encourage Southern genius.

Her son, the subject of this sketch, enjoyed the best early advantages and was thoroughly prepared for college under the instruction of noted teachers in his native town. In 1845 he was sent to Jefferson College, at that time a noted Presbyterian institution, at Cannonsburg, Pennsyl-

vania, and under the supervision of the celebrated divine, Dr. Robert J. Breckinridge, of Kentucky. In 1846 he returned to his native State and became a student in the College of South Carolina, which was then presided over by the famous scholar and orator, William C. Preston, and in which Francis Leiber, the well known writer on political economy, was a professor, and he graduated at this institution in 1848.

On leaving college Mr. West returned to his native town, and finding himself in needy circumstances engaged, during the years 1849-50, as a teacher of a small school in the Boykin family at Pleasant Hill, a few miles from Camden, and during that time devoted his spare hours to the study of law under the guidance of James Chesnut, who was afterwards United States Senator, and during the civil war a member of President Davis' staff. This accomplished gentleman took great interest in the young student, encouraged and aided him in many ways, and to his precepts and the sentiments which he inculcated, Judge West owes more than to any other person the reputation and eminence which he has attained at the Texas bar as one of the ablest practitioners and thorough lawyers in the State.

In the spring of 1851 he was admitted to the practice of his profession at Columbia, and located at Camden, but the litigation in those times being generally on a large scale and legal patronage being confined for the most part to experienced practitioners who had served their *viginti annorum lucubrationes* and established their reputation, he met with but little immediate encouragement, and chafing under the restraints of an arbitrary custom he determined to leave his native State and seek other fields.

In the fall of 1852 he immigrated to Texas and settled at Austin, where, on his arrival, he had but seven dollars and fifty cents in his pocket, which he had borrowed, and was really without a dollar of his own in the world. During the first two years of his residence in Austin his success was limited, but in 1854, Colonel H. P. Brewster, a South Carolinian, who had come to Texas under similar circumstances, sympathizing with the efforts of his young fellow-

statesman, took him into copartnership, and from that date, starting with a moderate practice, the star of his professional eminence took its way toward the zenith.

In 1855 he was elected a member of the Sixth Legislature of Texas, as the representative of the Capital District, and participated prominently in the discussion of the important questions of the day. His speeches in defense of General Rusk, on the public debt bill, on the questions which at that time agitated the South, and other subjects, attracted public attention and gained him popularity.

In 1856 he formed a copartnership with Hon. John Hancock, and the firm became one of great celebrity. For many years they did the leading practice in their section of the State, including many counties of Central Texas. They were particularly noted for their extensive land practice, their large business in the Federal courts, and for their success as the attorneys and representatives at Austin of the Houston and Texas Central Railroad.

In 1861 Mr. West was elected Secretary of State under Governor Lubbock, but in 1862 he entered the Confederate service and was appointed Assistant Adjutant-General, with the rank of Captain, on the staff of General Hebert, and subsequently served in the same capacity on the staff of General Magruder. At the battle of Galveston he was on the staff of General Scurry, and both that officer and General Magruder gave him complimentary mention for valuable services and good conduct in their reports. During the last year of the war he served on the staff of General E. Kirby Smith, in the Adjutant-General's department, and was with the command of General Scurry when that officer was killed in the battle of Jenkins' Ferry, on the Sabine River, in Arkansas. He was promoted for gallantry in this action to the rank of Major, and was assigned to duty as Judge-Advocate in the Trans-Mississippi department, and held this position until the close of the war.

At the termination of hostilities Judge West returned to Austin and resumed his copartnership with Judge Hancock, and the business of the firm soon became equal to that of any in the State in all the branches of the profession. In

1874, he was admitted to practice in the Supreme Court of the United States, and argued before that court, among others, the very important case of *Connett v. Williams*, which increased his reputation as an advocate and learned lawyer. In 1876, under an act passed in pursuance of the requirements of the new Constitution, he was appointed by Governor Coke one of the first commissioners to revise the Code of the State. He was made chairman of the committee, and devoted, in conjunction with his colleagues, all his energies and learning to the compilation of the present Revised Statutes of Texas, which attest in the highest degree the eminence of its authority.

He also represented Travis, and a number of adjoining counties, in the convention which framed the Constitution of 1875, and was chairman of the important committee on general provisions. He was not satisfied with the draft of the constitution when it was presented to the convention, and opposed its adoption as being, in his judgment, defective, but voted for it at the polls as being far superior to the existing organic law.

In December, 1881, he was elected an Associate Justice of the Supreme Court, and holds that position at the present time. His learning and integrity, his powers of research, his calm patience and courteous dignity, eminently fitted him for this elevated position, and he forms one of a trio of judges whose qualities and ability revives the "old court" of other days.

As a lawyer, Judge West was particularly noted for being a most consummate pleader, and an excellent practitioner, and was considered one of the ablest chancery and Federal court lawyers at the Texas bar. He prepared his cases with great care and research, and maintained his side in argumentation with the skill of a thorough dialectician. The merits of his cases lacked nothing which labor and learning could impart to them, and conscientious fidelity to the interest of his clients endowed his efforts with confidence and satisfaction, and success crowned his professional virtues.

As a judge his opinions are noted for their clearness and precision, and have the special merit of adducing all

the former decisions of the court upon the question at issue, and sifting from them every analogy and application to the merits of the case at bar, and laying down clearly the views of the present court, so that no conflict can arise between the assertion of a general principle and a particular state of facts.

In private and social life, Judge West is somewhat reserved in his manners, but he is a generous, courteous and kind-hearted man, and his personal qualities are staunchly subsidiary to his professional attainments. He was married in 1859 to Miss Florence Randolph Duval, eldest daughter of Hon. Thomas H. Duval, who so long and satisfactorily occupied the position of United States District Judge for the Western District of Texas. Her grandfather was Hon. William P. Duval, the first Governor of Florida, and the Ralph Ringwood of Washington Irving's "Tales of Bracebridge Hall," whose intimate friendship he enjoyed. Mrs. West was a highly accomplished lady, a charming vocalist, and would have been an ornament to any society. She possessed a rare poetic taste and genius. A small volume of her poems have been published for private circulation only, and they are of superior literary excellence. Judge West is not a member of any religious denomination, but has a predilection for the Protestant Episcopal Church, and for thirty years has been a regular attendant upon the services of that communion.

RICHARD S. WALKER.

Richard Sheckle Walker is a native of Kentucky, and was born in Barren County in the year 1824. His early educational advantages were ample and propitious. He graduated in 1842 at Centenary College, Jackson, Louisiana, and in 1844, when but twenty years of age, received his diploma from the law department of Transylvania University, at Lexington, Kentucky, and his license to practice at the bar of that State. Returning to Jackson, Louisiana, which was then his home, he devoted one year to the study of civil law preparatory to practice in the Louisiana courts. But Texas having recently to that time been admitted into the Union his aspirations seized upon its prospects, and he determined to cast his fortunes with the bar of the new State, and located at San Augustine in February, 1846, where he began his long and distinguished professional career. But having married Miss Eliza J. Clark, a daughter of Judge Amos Clark, of Nacogdoches, in the summer of 1848, he immediately removed to that place, and formed a copartnership with his father-in-law.

With endowments of a high order, combined with the advantages of his eminent association, his rise at the bar was rapid and confirmed, and in 1847 he was appointed district attorney, and was elected to the same office at each successive term during a period of nearly eight years. In 1857 he formed a copartnership with Judge George F. Moore, afterwards chief justice of the State, and continued this connection until he was elected to the district bench in 1860. During this association he was appointed, in conjunction with his partner, reporter of the decisions of the Supreme Court, and they prepared the twenty-second, twenty-third and twenty-fourth volumes of Texas Reports, which were

made statutory models for subsequent issues. In 1866 he reported alone the twenty-fifth volume, and was a member of the constitutional convention of that year, in which he took an active part in framing a constitution which would at the same time comply with the exigencies of the situation and assert the rights and dignity of the State.

In 1873 he was appointed by Gov. Coke to the judgeship of his former judicial district, to which, at the expiration of the term of his appointment, he was elected by the people. In 1879 he was appointed a member of the Court of Commission of Appeals, to which he has since been twice reappointed, and of which he is now the presiding judge.

As a lawyer the career of Judge Walker has been eminent and brilliant. The practice of the firms of Clark & Walker and of Moore & Walker, both in the Federal and State courts, was large and extensive, and they were employed in many important cases in both the civil and criminal branches of jurisprudence. He held the position of district judge until 1865, when he was removed by military authority as one of the impediments to reconstruction. He then continued his practice alone, with increasing reputation, until his professional ability and pure character caused him likewise to be called into service in a high judicial capacity, and the features which he has been instrumental in imparting to the jurisprudence of the State, both as a lawyer and judge, are important and varied. He has devoted all his mental and physical energies to his profession, and consequently his knowledge of law is profound and comprehensive. Endowed with a high order of talents his intellectual powers have been trained and whetted in a severe school of discipline and application. His capacity for intellectual labor is limited only by his powers of physical endurance, and he possesses the highest of all intellectual traits, and that to which Sir Isaac Newton attributed the excellence of his mental qualities—the power of concentrating his thoughts—the faculty of close attention and patient thinking. His mind is vigorous and active; its resources are rich and varied, and constantly at his command.

His perceptions are singularly prompt and acute, and his ripened judgment readily separates the practical from that which is speculative, while sound reason and accurate association verify his knowledge. This analytical capacity of devining the elements of a question, of measuring their separate and combined force, and determining at once the true character of a proposition—to untwine the unsized hank of concretion, eliminate the false strands and wind back the threads of abstraction into the pure synthesis of truth is the most subtle quality of the human mind, and the highest characteristic of professional eminence. This calm, clear-sighted understanding, linked with unswerving fidelity, is the secret of the success which has built for Judge Walker his well deserved reputation as an able lawyer, and combined with his varied and extensive learning, his stern integrity and purity of character, the judicial model is complete, and as an excellent judge, he enjoys the confidence and esteem of both the bar and the people.

These traits which denote a superior mind and a superior judge are heightened by his personal accomplishments. The light which illuminates his mind is kindled in his heart, and there it shines with its brightest luster. He is a man of an exceedingly amiable character, and free from any overwrought superficial sternness of judicial ethics, his manners are softented by a complaisancy and polish which indicate a heart full of kindness and generous impulses. He possesses in an eminent degree the quality which Lord Clarendon says particularly marked the character of John Hampden, “a flowing courtesy towards all men.”

The literary attainments of Judge Walker are likewise of a high order. The versatility of his genius enabled him without detriment to the duties of his jealous profession to cultivate a polished style of literary composition, rarely found in one whose thoughts and ideas are constantly clothed in the starched and staid habit of legal diction. He has a fine classical taste and copious command of language, and his style is chaste, unique and spirited, subdued only by the weight of thought and argument—a quality characterized by “*tot verba, tot pondera.*” His address to the

Texas Bar Association in 1883, published by the association, is a model of didactic composition, sparkling with refined phraseology and verbal elegance. The following are among the most important cases argued by Judge Walker before he was appointed to the bench. His reported decisions speak for themselves:—

Crain v. Crain, 17 Texas, 82, and 21 Texas, 790—presented questions of the first impression in Texas, under the will law of 1840. That law inhibited the disinherison of the testator's children beyond one-fourth of his property. In this case the testator had made conveyances during his life to a favored child of nearly all of his property, the aggregate value of which was about \$24,000. After his death, his other children brought this suit to recover their inheritable share of three-fourths of the property, alleging that the deeds of conveyances were simulated devices to avoid the will law. This suit was brought and prosecuted in the District Court by Clark & Walker, where a demurrer was sustained to the petition and the cause dismissed. The plaintiff appealed and it was argued in the Supreme Court by Judge Walker, and the judgment was reversed and the doctrines laid down in the two cases cited above were established for the first time in the jurisprudence of the State.

Aylott v. Lewis, 45 Texas, 190. This was another will case brought by R. S. Walker and his son, J. C. Walker. The question, whether real estate can pass under a nuncupative will in view of the language of the statute of 1840. It was held that it did not. The brief is reported, and in the discussion of that point the court adverts to it in terms of marked commendation. The view contended for was sustained in Ohio under a Statute exactly similar, as is shown in the brief. Three years after the decision of this case the features of the will law seem to have been so far varied from those of the former law, as to suggest, at all events, the idea that the construction unsuccessfully contended for in *Aylott v. Lewis* was intended to be adopted by the Revised Statutes. But no case has arisen under the revision presenting the question for decision. This case

stands alone in the reports, as the only one on the question involved.

Hewitt v. The State, 25 Texas, 722, is a case often quoted in text books, as well as in Texas jurisprudence. The question involved was made by Judge Walker on the trial of the case in the court below questioning the constitutional power of the Legislature to provide in a penal law that the indictment may dispense with the allegation of any fact essential to show on its face the violation of the law, or the ingredients of the crime, and to throw the burden of the proof on the accused to disprove a fact not alleged in the indictment for the offense. The doctrine contended for was sustained by the Supreme Court on constitutional grounds.

Moore v. Letchford, 35 Texas, 186. This case involved the construction and the effect of the repeal and the amendment of the several statutes regulating the lien of judgments on lands; and also the effect or influence of the civil war upon liens created by judgments. This suit was brought against the current impression of the profession as to the law involved in the case, and in the court below a demurrer to the petition was sustained. On appeal the views presented by Judge Walker in his brief were fully sustained, and the law as then settled has continued ever since, and the brief of appellant's counsel was referred to in a subsequent case as laying down the correct rule.

Cravens v. Brooke, 17 Texas, R. 268. This was a case involving the construction of the law granting pre-emption rights to settlers on vacant public domain on several important points which had not before been determined. The case was argued by Judge O. M. Roberts on one side, and Judge Walker on the other; the arguments of both appear in the report of the case. Chief Justice Hemphill in the opinion said the cause had been argued with signal ability by the counsel on both sides. This case may be regarded as one of the leading cases on the questions involved.

JOHN P. WHITE.

John Preston White, presiding judge of the Texas Court of Appeals, was born at Fruit Hill, near Abingdon, Virginia, on the 7th of March, 1832, of which place his father, James L. White, was a native and merchant. He had from his earliest youth the advantages which the excellent schools and academies of his town afforded. In 1847 he entered Emory and Henry College, from which he was graduated in the regular collegiate course in 1850, and received the Robertson prize medal for proficiency and accomplishments in oratory. In the fall of 1850 he entered the University of Virginia, taking the tickets of moral philosophy and law, and received certificates of proficiency in both of these departments at the following intermediate examination. In 1851 he was chosen anniversary orator for the Jefferson Society, and soon afterwards retired from the university, without standing a final examination, in consequence of a severe attack of pneumonia, which came near ending his life.

On the recovery of his health he studied law two years in the office and under the instruction of Samuel Logan, a distinguished lawyer, and at that time Commonwealth's attorney for Washington County, Virginia. In August, 1853, he was admitted to the bar, upon an examination before George W. Hopkins, Andrew Fulton and R. M. Hudson, three distinguished circuit judges of Virginia, and began the practice of his profession at Abingdon. He was married during the same year to Miss Annie Stuart Lewis, an accomplished and noble young lady of Charlottesville. His early professional prospects were flattering, but the *lucubrations* of a young lawyer at the bar of Virginia at that period were defined by an arbitrary custom, and often painfully pro-

longed before he was considered competent to manage an important case, or exert an influence favorable to a successful issue ; and, chafing under restraints which prevented the immediate and full development of his talents, Mr. White sought a more spacious and less ceremonious field, and on visiting Texas in the early part of 1853, he was so favorably impressed with the advantages which it offered to his aspirations, that he determined to make his home in the new State, and in 1855 removed to Seguin, in Gaudalupe County, where he settled in the practice of law, in copartnership with Thomas M. Logan, a son of his old preceptor, who came with him to Texas and died a year or two afterwards.

At Seguin Mr. White soon established a reputation both as a lawyer and a man of culture and talent, and he was employed in most of the important cases, both civil and criminal, that came before the courts of Gaudalupe and Comal Counties, among which was the great case of *Demchy v. Devilbiss*, reported in 37 Texas, 93, which involved the title to the entire city of New Braunfels, and which he gained in behalf of the city. He devoted all his energies and talents to his profession, and, as a practitioner, was eminently successful in both the civil and criminal branches of the law. While possessed of marked executive ability and popular traits of character, he had no aspiration for political or even professional office, and, with the exception of being a notary public and Mayor of Seguin, he declined all inducements of official preferment until he was appointed by Governor Coke, in 1874, to the bench of the Twenty-second Judicial District. This position he held until 1876, when he was elected one of the three judges of the Court of Appeals, and, upon the death of Judge Ector, in 1879, was elected Presiding Judge of that bench, which position he still occupies.

As a judge, he is full of steady energy and research. His decisions are rendered in a cogent and spirited style, indicative of clear comprehension, thorough conviction, and conscientious judgment. His knowledge of law and precedent is comprehensive. The natural powers of his mind are vigorous and have been cultivated by an excellent edu-

cation and sedulous professional training. These qualities, associated with a strong force of character and a high sense of duty eminently qualify him for the position he holds. Kind-hearted and sympathetic in his disposition, he is peculiarly sensitive to the appeals of lenifying circumstances, and in criminal cases tempers his judgments with every meritorious palliation consistent with a strict compliance with the demands of law and justice.

Judge White has decided many important questions of first impression in Texas jurisprudence. His decision in the case of *Johnson v. The State*, 1 Texas Court of Appeals, 333, in which he admitted the common-law principle that the testimony of a deceased witness properly taken on the examining trial before a justice is valid evidence, has been incorporated in the code of criminal procedure. His opinion in *Cox et al. v. The State*, 8 Texas Court of Appeals, 254, sustaining the power of a district judge to change the venue in criminal cases of his own motion, and establishing the inability of a verdict to cure a defective indictment, is able and exhaustive, and impressed these principles into permanent features of Texas jurisprudence. His interpretation of the phrase "disturbing public worship," in *Wood v. The State*, 11 Texas Court of Appeals, 318, as being inapplicable to mere ecclesiastical meetings, caused the Legislature to enact its appliance to assemblages of either character.

His decision in *Wooldridge v. The State*, 13 Texas Court of Appeals, 445, is a striking illustration of his strict construction of law, and the vigilant watch which, as a judge of a court of last resort, he maintains at the door of justice. The jury in that case returned the verdict that "we, the jury, find the defendant, Ben Wooldridge, guilty of murder in the *first* degree, and assess the punishment at death." The insufficiency of this verdict was presented as ground of a motion for a new trial, which was overruled, and on the trial of the appeal. Judge White sustained the invalidating defect and remanded the case. For this he was severely assailed by law critics throughout the country; but no answer has ever been made to the argument which led to his

conclusion. Here was a verdict containing the word *fist* — a word properly spelt, well defined and well known, which could not be made either by sound or signification to supply the place of the requisite word “*first*,” or convey any idea that enters into the composition of a legal verdict. Therefore, not even the principle of *idem sonans* could apply. Could the judge strike out a properly spelt and well known word in a verdict and by inference and intentment substitute another of entirely different import? If so, where would this power end? If he could replace one word, he could replace another, and change the entire character of a verdict at discretion. Nor could the pronunciation of the proper word by the clerk in reading the verdict remedy the defect, for that would be to cure one error by virtue of another.

His distinction in *Simco v. The State*, 9 Texas Court of Appeals, in regard to the rules which govern the pleas of *autrefois acquit* and *autrefois convict* are highly important, and in this case he introduced the principle that a conviction for a higher crime than that charged in the indictment, and therefore unlawful, does not exempt from a second prosecution for the offense for which the party was indicted.

No provision has ever been made by law for the publication of the decisions of the Court of Appeals in civil cases, although questions of new impression and of the greatest importance are constantly brought before that tribunal and stamped by its decisions upon the jurisprudence of the State. To remedy this unaccountable legislative indiscretion, Judge White, in conjunction with Judge S. A. Willson, prepared and published at their own expense, in 1883, a report of the leading civil cases decided by that court. This is a work of great merit. It combines the features of a report and digest, and presents in convenient sections a full and clear exposition of the law in connection with a summary of the facts which gave rise to the principle enunciated. These sections are indexed, so that the practitioner can readily examine any question without reference to other features of the case. This novel and happy de-

sign affords a utility which greatly enhances the value of the work, which altogether make it an indispensable addition to every law library in the State, and useful as an analysis of principle to any practitioner.

While precluded by the proprieties of his office from any active participation in politics, he is a thorough Democrat in his views, and during the civil war was a strong Southerner in his sentiments. He entered the Confederate service at the beginning of the war as captain of a company in the Sixth Regiment of Texas infantry, and never permitted either hardship or defeat to chill his ardor or cloud his hopes until the final consummation of the issue. In the battle of Arkansas Post he was taken prisoner and confined at Camp Chase until the battle of Chancellorville, when he was exchanged and ordered on duty in the Trans-Mississippi department, and at the close of the war resumed the practice of law at Seguin.

While he is a man of marked firmness and candor, he is amiable and obliging in his disposition, polite and courteous in his professional ethics and social manners, and is an honor to the bench over which he presides.

SAMUEL A. WILLSON.

Samuel Andrew Willson, one of the judges of the Texas Court of Appeals, was born in San Augustine County, Texas, on the 9th of January, 1835, where his father, Stephen Pelham Willson, who was a native of Delaware county, New York, and a physician by profession, settled in 1831. His mother, whose maiden name was Mary Richardson Davis, was a native of Georgia, and a relative of Hon. Jefferson Davis. His education was confined to the advantages afforded by the country schools of Texas until he arrived at the age of fifteen years, when he abandoned his academic pursuits and began the study of law in the office of Hon. M. Priest, of Woodville, Texas. In 1852, when but seventeen years of age, he was admitted to the bar by authority of a special act of the Legislature relieving him of the disabilities of minority, and immediately entered upon the practice of his profession at Woodville. He was endowed with a capacity for intense labor, inspired by an ambitious thirst for knowledge, and, subsidiary to a vigorous and intelligent application to the study of law, he managed by a course of useful reading and close observation to supply the deficiency of his early education.

These qualities and habits promoted an advancement which soon commanded public recognition of his ability and sterling traits of character, and, in 1856, he was, at the age of twenty-one years, elected district attorney of the Fifteenth Judicial District, and was re-elected to the same office in 1858. The remarkable professional success of Judge Willson has been constant and uninterrupted, except during the period of his military service. He has always been a thorough Democrat in his political creed, and fidelity to his State and section of the country was an innate and cherished

quality of his being. He enlisted in the Confederate service as early as May, 1861, as first lieutenant of a company in the First Regiment of Texas infantry. In 1862 he was made captain, and served in the army of Northern Virginia until the battle of Gettysburg, in which he was taken prisoner. He participated in the battle of Seven Pines, the seven days' fight, in the second battle of Manassas, and the battle of Sharpsburg, in the last of which he was severely wounded, and acted his part in all with marked gallantry and distinction.

At the close of the war he returned to the practice of his profession at Woodville. His great success as a prosecutor had already established his reputation as an able lawyer, which was so greatly enhanced by other qualities of character, that, in 1866, he was elected judge of his district, but in 1868, when the State was placed under military rule, and before he was apprised of the designs of that power, and the policy of sweeping removal from office which it adopted, he resigned in consequence of an indignant aversion to holding office under such authority, and removed to Rusk, in Cherokee County.

In 1869 he was again elected to the office of district attorney, the duties of which he had so ably performed in the first years of his majority, and served until that office was abolished in that district by the Constitution of 1870. In 1879 he was appointed by Governor Coke one of the committee to codify the laws under the new Constitution, and the revised code owes much of its merit to his genius and experience. In the spring of 1882 he was appointed by Governor Roberts one of the judges of the Court of Appeals, to fill a vacancy occasioned by the death of Judge Winkler, and in the fall of that year was elected to the same position by the people, and which he still occupies.

In 1883 Judge Willson prepared and published, in conjunction with Judge White, a combined report and digest of the civil cases decided by the Court of Appeals, to supply a want arising from the lack of any provision of law for the publication of the decisions of that court in the

civil branch of jurisprudence. Its design is strikingly novel and ingenious, and it is a work of great merit and ability.

As a lawyer, his studious, painstaking and exact analysis, his clear perception and excellent judgment, made him a safe legal pilot and counselor. He possesses a thorough knowledge of legal principles, and these he makes the basis of the solution of every question; and, if it be true that genius is a capacity for intense and intelligent labor, Judge Willson possesses an ample measure of that quality. Naturally vigorous in both his mental and physical powers, he has cultivated the capacity for severe and prolonged intellectual labor, directed by a minute observation, a well arranged and uniform method, a closely calculated accuracy and a prompt punctuality and dispatch.

As a judge he is stern in the performance of duty and in the pursuit of justice. But while his judgments are moulded from an inexorable interpretation of fact and a strict and logical application of law, their frown is softened by a conscientious regard for every personal right. He never evades a question, nor hesitates to front a fact, but promptly decides every issue presented in a case, necessary to establish a principle or to determine the rights of the parties. His decisions open wide the door of justice, and while he cites authorities abundantly, he does not deal with a question second-handed alone, through the perceptions of others, nor does he see it simply through the dusty glasses of precedent, regardless of the varied colors of circumstance, but impresses his decisions with his own views and his own judgment in reference to the particular state of facts involved.

Personally, Judge Willson is a man of exceedingly kind and amiable disposition. Calm, mild and self-possessed, he is courteous in his manner, and a warm and constant friend. He was married in 1853 to Miss Susan E. Priest, an excellent and cultured young lady of Woodville, and the daughter of his legal preceptor. Since his appointment to the bench he has resided in Austin, where as a citizen he

is no less esteemed than as a judge of a tribunal whose proficiency and *personnel* might challenge comparison with any court in any country.

One of the first important judicial acts of Judge Willson was his declaration, in *Williams v. The State*, 12 Texas Court of Appeals, 395, of the unconstitutionality of the act of 1881, known as "the common sense indictment act." In this act the Legislature had authorized and prescribed forms of indictment dispensing with statements which at common law had always been considered as essential to the description of the offense. In this case he decided in an able and unanswerable opinion that the import and attributes of the term "indictment" must be taken to be the same which it bore when it was adopted in the bill of rights, and that the Legislature had no power to change them; nor could the words, "take, steal and carry away," or any other like terms, be construed by application or intendment to constitute a sufficient description of the crime of theft. This was followed by a number of affirmatory decisions and the act was repealed.

In *Robertson v. The State*, *Ibid.* 548, he decided the question, in regard to which there were many conflicting authorities, that the Legislature can revoke an occupation license at pleasure, and that, therefore, the sale of spirituous liquors, under a license previously granted in a locality subjected to the operation of the local option act, subjects the vendor to the penalty of its violation. But in his dissenting opinion in the case of *Holly v. The State*, 14 Texas Court of Appeals, 517, he held that while a reasonable doubt must be weighed in favor of the validity of legislative acts, and that an implication of the want of power in the Legislature must be clear and strong to authorize the judiciary to invalidate its acts, the clause of the Constitution requiring the Legislature to enact the prohibition of the sale of intoxicating liquor under certain circumstances, does not empower it to make the simple gift of liquor an offense, unless the gift was made for the purpose of evading the law.

Civil rights of negroes. *Cavitt v. The State*, 15 Texas,

Court of Appeals, 196. In Texas, courts have no power to revise or control the action of commissioners in the selection of jurors unless in clear cases of fraud or corruption, or of some great wrong calculated to shock the sense of justice or defeat the ends of law; and while the statute does not require the commissioners to consider the question of race or color in the selection of jurors, it does not prohibit them from this discretion. Upon this subject the law is wisely silent.

In *Shultz v. The State*, 15 Texas Court of Appeals, 258, he held that the constitutionality of the statute authorizing an indictment to be substituted by the district or county attorney for an original one which has been lost, and whether such substituted instrument is an *indictment of a grand jury* as required by the bill of rights, are open questions; and that it is safer in such cases to have another indictment returned by the grand jury. When, however, an original indictment has been answered by plea, there can be no question that its loss can be remedied by the statutory method of substitution; for, in that case, no right of the accused is imperiled.

The revisors of the Penal Code introduced a new statute, before that time unknown to the laws of the State, making it criminal slander to impute the want of chastity to a female. Judge Willson wrote the first opinions construing this statute, and in *Layerone v. The State*, 12 Court of Appeals, 426, he held that the indictment must set forth, at least substantially, the language or writing which constituted the imputation; and on rehearing, in *Patterson v. The State*, *Ibid.* 458, which had been decided to the contrary when he came upon the bench, he held, in an able opinion, that the defendant in actions of this character must confine himself to evidence in proof of the particular acts or conduct upon which he based his imputation, or of the general reputation of the female at the time the alleged slander was uttered.

In *King v. The State*, 13 Texas Court of Appeals, his opinion clearly defines the character of the plea of self-defense and the rules which govern it in Texas jurisprudence, and in

Jones *v.* The State, *Ib.* 1, he reviews the previous decisions in regard to the burden of proof and ably elucidates the principles and rules which obtain in relation to that subject.

In LaNorris *v.* The State, 13 Texas Court of Appeals, 33, the conductor in charge of a Pullman sleeping car was charged with maintaining a bar and retailing intoxicating drinks to passengers without having paid the tax occupation required by the statute. Judge Willson held that the circumstance of locomotion did not prevent the liability of the conductor and that an employe who sells an article when the occupation tax is unpaid is equally liable with his principal. This decision abolished the nefarious traffic which had become prevalent on the railroad lines in the State.

In his separate opinion in Morgan *v.* The State, 16 Texas Court of Appeals, 628, he discusses elaborately the new and interesting question as to the effect of gross neglect and improper treatment of wounds in modifying the degree of guilt, and construes the Texas statute to be in contravention of the common-law rules in regard to the subject, so far as to shift the guilt of homicide from the person who inflicted the wound to the physician or surgeon through whose neglect or maltreatment death ensues. In this view of the question he received the concurrence of Judge White.

Judge Willson has also decided many important civil cases. In G. C. & S. F. Railroad Company *v.* Graves, White & Wilson, Con. Rep. 301, he rendered the first decision in Texas as to the effect and import of the word *damage* in the present Constitution of the State, which has been approved by the Supreme Court, in 60 Texas, 656. His opinions are all written in a clear and concise manner, and forcibly exemplify his searching ability and sound judgment, and those cited present features of first impression in the jurisprudence of the State. Being in the prime of life and vigor of health, his judicial record predestines a future usefulness which will add new glory to the Texas bench.

J. M. HURT.

James Mann Hurt was born in Carroll County, Tennessee, on the 15th day of December, 1830. His father, for whom he is named, was a native of Virginia, and a Baptist clergyman, and his grandfather, Philomen Hurt, was a Virginian soldier in the Continental army, and served under General Green in the battle of Guilford Court House. His mother was a daughter of David Marshall, of Richmond, Virginia, who removed at an early day to Tennessee, and was one of the first settlers of the town of Lebanon.

The subject of this sketch was reared chiefly on a farm, but enjoyed good educational advantages at an academy in Kentucky, and at Bethel College. Having completed his education at the latter institution, he read law three years in the office of Hon. Milton Brown, at Jackson, Tennessee, afterwards graduated in the law department of Cumberland University, and in February, 1857, received his license from the Supreme Court of Tennessee. In 1858 he married Miss Matilda L. Douglass, the accomplished daughter of Judge William Douglass, of Osceola, St. Clair County, Missouri, and began the practice of his profession at that place, but soon afterwards removed to Sherman, Texas, where his energy and popular traits of character soon gained him friends and clients, and he took a prominent stand at the bar.

He had been reared a Federalist and inspired with strong Union proclivities, but at the outbreak of the civil war he cast his lot with the Confederacy, and has since been a staunch advocate of Democracy. He enlisted in the service as captain of a company of infantry, which he raised in Grayson County, and which formed a part of the First Texas battalion of sharpshooters in Maxey's brigade. He was at

the siege of Port Hudson, and afterwards served under General Joseph E. Johnston in his campaign for the relief of Vicksburg. In December, 1863, he was ordered with his company to the Trans-Mississippi department, and served under General Maxey until the surrender, when he marched his company back to Grayson County, and there disbanded it.

In 1866 he was a member of the Constitutional convention, assembled to re-organize the State government under the Johnson reconstruction, and was an active and efficient member, particularly in his efforts to preserve the rights of the people and the dignity of the State. He was soon afterwards appointed by Governor Throckmorton district-attorney, and acquired the reputation of being one of the best prosecutors in the State; but in 1867, in consequence of his inability to take the oath imposed at that time upon Southern officials, he resigned his office and returned to his practice.

In 1870 he was re-appointed by Governor Davis, and accepted the position with the understanding that his political principles should suffer no restraint. This was subsequently found to be entirely incompatible with the violent Republican policy of the administration, and, in 1871, he was removed without notice to make way for a compliant incumbent. On returning to the bar he found his practice large, particularly in the criminal branch of the law, and in 1876 he removed to Dallas, where his practice embraced a still larger field.

In 1880 he was elected one of the three judges of the Texas Court of Appeals, a position which he continues to fill with ability and honor. He is a man of talent, a lawyer of ability, and a first-rate judge. His perceptions are remarkably quick and acute, and he is an excellent judge of law. His ready and accurate interpretation of the motives of men and the springs of human action, his knowledge of the methods of law by which these are reached, and its application to all the varied features of crime, render him one of the best criminal lawyers in Texas, and peculiarly qualified for the bench of criminal appeals. He seems to abhor mere technicalities, and during his career upon the bench has almost invariably

dissented from every opinion of his associates based chiefly upon mere technical questions. He delights in pursuing the unhedged path of fact, and brushing away the trammels of antiquated forms, drive straight at the crest of crime and the gist of the offense. Yet, he is an amiable and kind-hearted man, full of good-natured humor, and an admirable companion.

He possessed in a high degree that sparkling mirth and living amiability which laps away more brambles, levels down more hillocks, surmounts more obstacles of life, and confers upon its possessor more true happiness than any other attribute of human nature. Power may reach the limits of its control; force may blunt its weapons against the dull hide of obstinacy; reason may exhaust in vain its logic upon the dull ear of perversity, and the unction of suasion may congeal before the cold threshold of misanthropy; but good nature wields a soothing influence over the most obdurate circumstance, and binds the sternest fate a captive to its charms.

Notwithstanding its discountenance by the mock dignity of asceticism, and the pharisaical gravity of the self-righteous, a merry humor rarely fails to find a kindling reciprocation in the bosom of the most embittered misanthrope. It is indeed the most efficacious antidote to that more prevalent spirit which not only magnifies the ills of life, but soars away upon the wings of excursion in search not of the olive branch of hope, but of the rising peaks of sorrows which it knows not of.

The hilarious man dispenses a contagious cheerfulness which penetrates and often dispels the most settled gloom. He weaves the garlands of pleasantry of the very thorns of life, and hangs a rose upon every thistle. Such a man is truly a promoter of philanthropy, and such is in a high degree the character of Judge Hurt. He is always equally apt and ready for a capital trial or a capital joke.

At the bar his main fort lay in his art of captivating the jury, an effect which his humor and abundant store of pleasing anecdote rarely failed to accomplish. In variety of humor and sparkling repartee he is perhaps more like Curran than any other member of the Texas bar.

His analysis of the character and incidents of the plea of insanity in *King v. The State*, 9 Texas Court of Appeals, 515, from which the other judges dissented, is novel and ingenious. The chief question presented was:—

When the plea of insanity is interposed, is the burden of proof on the State to show sanity, or is it on the defendant to show insanity?

In discussing this proposition he said:—

“Brush from this question the dust of ancient days, separate it from its old companions, and its solution is perfectly simple. Before entering upon an analysis of this subject, permit us to allude to some very strange and inconsistent expressions used by the learned judges in treating of this question. The following are of the number alluded to: ‘As *insanity excuses the commission of crime*, on the ground that the actor is not a responsible being,’ etc. ‘The *onus* of proving the defense of insanity, or, in the case of lunacy, of showing that the *offense* was committed when the prisoner was in a state of *lunacy*, lies upon the prisoner.’ ‘It is rather in the nature of a *plea to the jurisdiction*, or a motion to *change the venue*. The defendant, through his counsel and friends, comes in and says that he is not *amenable* to penal jurisdiction.’ A very respectable volume could be made of such remarks, but those cited will suffice for our purpose.

“Let us take a steady look, for a moment, at these propositions. For example, take the first. What sane mind can comprehend the possibility of a *crime* being committed by an *insane* person? If the prisoner is *insane*, there is no *crime*. If there be *crime*, there is no *insanity*. Insanity can not *excuse* crime, from the fact that, if *insane*, *there is no crime to be excused*. These observations apply to the second. Now to the third: ‘Plea in the nature of a plea to the jurisdiction.’ This plea never draws in issue the *guilt* of the prisoner. Under this plea, sanity or insanity *would* be the issue, separate and independent from the question of guilt, to be determined. But the court *has jurisdiction of the crime*, if any has been committed; and how are we to sever the one from the other? Shall we first

try the question of sanity, and then that of guilt? Not so; for on the threshold we are met with the fact that, under the plea of not guilty, evidence on the question of sanity can be introduced. Behold what darkness and confusion surround the question of sanity! a subject around which gather more vagaries and inconsistencies than infest any other question in the whole range of criminal jurisprudence.

“But what shall be said upon the proposition that the plea is ‘in the nature of a motion to change the venue?’ If there is the faintest, the most remote analogy existing between the plea and a motion to change the venue of a case, we frankly confess our inability to trace it. We had thought the object of a motion to change the venue was to remove a cause from the county in which the indictment was found to some other one for trial, and that the ground of removal was based upon the fact that an impartial trial could not be had in the proper county—that in which the indictment was found. To what court or county shall it be taken? Will not the same reasons for the change be found in the court or county to which it is transferred? Most unquestionably they will. These conclusions being true, the case could only find a court of last resort in the tribunal of heaven. This would defeat the ends of human justice, since the primal idea upon which it is based carries with it the further idea of *human expiation for human wrong*.

“These strange and inconsistent expressions which we find in the writings of eminent text-authors are the legitimate offspring of fundamental error which underlies their treatment of this entire subject, and we merely allude to them here to intensify and concentrate attention upon this parent error, from whose fruitful loins have sprung all of these ill-considered statements upon this question of sanity. In jurisprudence nothing can be more valuable than terse statements of principle. On the other hand, hastily conceived and unhappily worded enunciations not infrequently open the flood-gates of litigation, with its vast attendant expense, and lead to judicial murder under all the forms and solemnities of the law.

“The fallacy of this fundamental error can be made more fully to appear by comparing two propositions : —

“1. *Sanity is an inherent, intrinsic element of crime.*

“2. *Sanity is not an inherent and intrinsic element, but is extrinsic and independent of the crime.*

“The last proposition contains a monstrous fallacy, the fruits of which are visible in so many of the text-books, and which are followed out in many of the enunciations in the adjudicated cases. If *sanity* is an *inherent* element of crime, no well-ordered mind can stop short of the conclusion that the State must carry its burden and prove it. Feeling the force of this, writers have treated it as an *extrinsic* matter, separate and distinct from the question of guilt, and hence those strange and incomprehensible expressions above referred to.

“Let us pay our respects to this last proposition, and see if from a bare touch it will not crumble to dust. ‘Sanity is *extrinsic*.’ Therefore the prisoner is to be tried for the *act*, and the question of *intent* or *malice* is not drawn in issue. This for the simple reason that an issue formed upon the question of *intent* or *malice* irresistibly includes that of *sanity*; for *there can be no intent or malice without sanity*. Therefore it follows from this erroneous position that the jury, in viewing the act sought to be punished, must strip it of the *intent* which prompted it, and look alone to the *act*. To this we enter our solemn protest.

“We now invite attention to what we believe to be the true position, which is that *sanity is an inherent, intrinsic, and necessary element of crime*. Is this a correct proposition? Is it not a self-evident proposition? If murder can be committed without *intent* or *malice*, then the proposition is false; if not, it is true. But we do know, if it be possible to know anything, that, to constitute murder, the act of killing must be attended not only with the *intent* to kill, but with *malice*; and we also know, with the same degree of certainty, that there can be no *intent* or *malice* without *sanity*. It therefore follows, beyond any shadow of doubt, that *sanity* is an inherent, intrinsic, and necessary ingredient of crime.

“ We now return to the first proposition stated at the beginning of this opinion, which is as follows: ‘ When the plea of insanity is interposed, is the burden of proof on the State to show sanity, or is it on the defendant to prove insanity?’ We have thus stated the proposition because we find it so stated in the books, but it is not a practical one. There is no such plea known to our Code as applicable to a trial of a criminal cause. We have four pleas — two special, and the pleas of ‘ guilty ’ and ‘ not guilty ’ — and this plea of ‘ not guilty ’ is a denial of every material allegation in the indictment. Under it, evidence to establish the insanity of the defendant, and every fact whatever tending to acquit him, may be introduced. It follows that under this plea the defendant denies every constituent element of the offense charged, and this plea of ‘ not guilty ’ is the same as if the defendant had denied specifically each element of the crime charged.

“ This leads us to the consideration of the charge in this case, which is murder, and is defined thus: ‘ Every person with a sound memory and discretion who shall unlawfully kill any reasonable creature in being, within this State, with malice aforethought, either express or implied, shall be deemed guilty of murder.’ From this definition it follows that, to constitute this offense, the slayer must be ‘ of sound memory and discretion; ’ a ‘ reasonable creature ’ must be slain, and the slayer must be actuated by ‘ malice.’ We have then, first, ‘ sound memory ’ in the slayer; second, a ‘ reasonable creature ’ slain; and the slayer prompted by ‘ malice.’ These constitute *murder*, and nothing less than all these can constitute murder. By what principle of logic, reason, or justice can either of these elements be eliminated from the offense? From this it follows that an indictment charging this offense embraces all the above elements, whether specifically named or not; and though the indictment omits to charge that the defendant was of ‘ sound memory,’ yet charging ‘ malice,’ *sanity* is necessarily included. The problem which equals murder is composed of three members: First, ‘ sound mem-

ory' of slayer; second, 'reasonable creature' slain; and, third, 'malice' in the slayer.

"Let us see if we can eliminate from this problem one of these members, and leave every element of the offense in the problem. There can be no 'malice' without *sanity*; hence, 'malice' includes *sanity*. We therefore have, first, a 'reasonable creature' slain; second, a malicious slayer — murder. Hence the charge in the indictment, that the killing was with 'malice aforethought,' charges the slayer to be of 'sound memory and discretion.' If this conclusion is not correct, we most unhesitatingly assert that the indictment is worthless; for we have found, under our Code, *sanity* to be an element of *murder*, and, by well-settled rules of criminal pleading, an indictment which fails to embrace in its allegations all of the constituent elements of the offense is fatally defective. The authorities approach nearer to unanimity upon this question than any other known to us.

"If the above analysis be correct, and we think it is, it devolves upon the State to prove every *inherent* element of the offense; and as we have found *sanity* to be such an element, it rests upon the State to prove *sanity*. Still holding with a firm grasp the proposition that *sanity* is an *inherent* element of the offense, and as there is no such thing in law as separating the *elements* of an offense so as to cast the burden of a *part* upon the State, and, *as to the rest*, to require the defendant to take the burden of proving a negative, it follows that the existence of each element is an *affirmative* proposition, the proof of which rests with the State. The idea that the burden of proof shifts is in direct conflict with the philosophy of criminal jurisprudence, and at war with fundamental principles; for we hold that, with regard to necessary ingredients, it never shifts. If two or more elements constitute an offense, which of these elements must be proven by the State, and which must be proven *not* to exist by the defendant? If *elements*, do they not all stand upon the same plane, or are there some which prove themselves? If there are, they are not *elements*. Are we to require the defendant to prove the

non-existence of that element — insanity — upon which *intent* and *malice* depend, and yet hold the State to prove *intent* and *malice*? To us it is impossible to harmonize, logically, these positions.

“ We are now led to meet the most plausible, difficult, and potent position which can be assumed upon the other side. And here we concede that it is supported by the weight of authority ; but we do not think it is founded in principle, and if not founded in principle, to follow would be dangerous. It is this: The fact of killing being admitted, and that beyond doubt the prisoner did the killing, and sanity being the normal condition of all persons, the law presumes the prisoner sane until he shows to the contrary ; and therefore the burden of proving *insanity* rests with the prisoner. It will be seen at once that the struggle is with this presumption of sanity.

“ Let us move quietly but closely up to this gentleman, and try to see who he is. The name of this witness is *presumption*. He is a venerable gentleman. He was contemporary with the first-born principles of enlightened jurisprudence. For truth and integrity he has never been excelled by any witness. His means of knowledge are unsurpassed, having for a foundation the laws of nature, and the truth of his evidence is corroborated by the experience of man through all ages. The effect of his evidence is the production of not only a mere *prima facie* case, but full and complete conviction when not opposed. Upon his evidence alone, when not contradicted, sanity being the only issue, man has been made to expiate the violated law with his life. When he speaks to the sanity of the prisoner, his evidence meets with an approving response in the mind of every intelligent and honest juror, for their experience corroborates his testimony. But he is not infallible. He never testifies to the sanity of any *particular individual*. He is never *positive*, but always *presumptive* evidence. Sanity being the normal condition of man, he *presumes* that to be the condition of the prisoner. With the parents or relatives of the prisoner he is not acquainted. He is not aware of the fact that perhaps some of the prisoner's blood-relatives are

now inmates of an asylum for the insane. Though his locks are bleached by the winters of ages; though he has never been charged with prejudice, and though his evidence is supported by the laws of nature and corroborated by the experience of man, yet he is somewhat *arbitrary*. He places the prisoner in the normal condition of man, which is *sanity*, and demands of him the same conduct whether sane or insane. He *never heard of insanity*, because he speaks alone from the laws of *nature*, and *insanity* being an *exception* to the natural rule, they are unacquainted. With the prisoner's language, conduct, or misfortunes he has nothing to do, and of them he is entirely ignorant. Yet he holds him with an iron grasp to the laws of nature and the experience of man. Is he omnipotent? How many witnesses are necessary to measure arms with this Titan? Does he partake of the kingly character, and can he 'do no wrong?' Upon the testimony of one witness alone, the prisoner may be legally convicted and executed. Can this gentleman's evidence accomplish more? In no case can he accomplish more than can be effected by the evidence of one witness. We do not mean the evidence of *any witness*. Can the evidence of one witness ever be an overmatch for him? In some cases it legally and justly can; in others the testimony of scores will not suffice, this depending always upon the character of the witnesses, their means of knowledge, and the *facts sworn to*.

"Having endeavored to become somewhat acquainted with this witness *presumption*, we now desire to call special attention to a very remarkable feature of his character. It is conceded by all that his evidence is relied upon, and is absolutely necessary to convict, in a great many cases in which the *question of sanity* is *not* involved. It is also conceded, under our decisions, that in *these very cases* the burden of proof *does not shift*, but remains with the State throughout. Now, upon what principle of logic or justice can we give to this *presumption* so much power in a case involving the question of *sanity* as to *shift* the *burden* to the *prisoner*, and in the other cases hold that it *does not shift*?"

A. S. WALKER.

This excellent judge and profound lawyer was born near Brownsburg, in Rockbridge County, Virginia, on the eighteenth day of August, 1826. His parents were of Scotch-Irish descent, and his father was a farmer. His opportunities for an education were ample, and he graduated in 1850 at Hanover College, Indiana, from which he received the degree of Master of Arts in 1854. He immigrated to Texas in January, 1852, and taught school at Manayunk, on the San Jacinto River, in Harris County, and while thus engaged prepared himself for the bar under the advice of David G. Burnett and J. Pinckney Henderson, who also gave him the use of their books. In January, 1853, he obtained his professional license from Judge C. W. Buckley, at Houston, and in July located at Georgetown, where he was soon afterwards appointed district clerk by Judge R. E. B. Baylor to fill the vacancy of a fractional term in that office, occasioned by the resignation of the incumbent. In 1854 he began his practice at the bar, and in 1858 was elected district attorney of the Seventeenth Judicial District. In 1862 he was elected district judge, but was removed from the bench in 1865 by the military power as an impediment to reconstruction.

While at the bar of Georgetown Judge Walker was associated with A. J. Strickland, and, after his death, formed a copartnership with Colonel Richard Sansom, to which A. H. Chalmers was subsequently admitted. In 1865, having associated with Morrison H. Bowers, he removed to Austin, and after his death, in 1872, he formed a copartnership with Judge A. W. Terrell, which continued until he left the bar.

On the organization of the Court of Commission of

Appeals, in 1879, he was appointed by Governor Roberts one of the judges of that bench; but held his office only a short time before he resigned in order to accept that of district judge, to which he had been elected by the people of the Sixteenth Judicial District, without canvass or solicitation. In 1884 he was re-elected without opposition, and holds that position at the present time.

The ruling traits of his character are a deep love of justice, an unswerving integrity, and an abiding strictness in the performance of duty. He is a thorough master of the principles of law, untiring in his search for truth, calm and conscientious in his conclusions, and no art of casuistry can induce him to abandon an opinion formed from an impartial judgment, and fortified by reason and sound sense. Yet he is patient and courteous in his deference to the opinions of others and to the views of opposition; and while he is firm in maintaining his own honest convictions, he never challenges the sincerity of others.

These traits eminently qualify him for the bench, and few judges ever enjoyed greater confidence on the part of both the bar and the people. His opinions are generally accepted as conclusive of the questions at issue, and as lights along the path of justice. While he is stern and inflexible in the enforcement of the law, his opinions are always so tempered with manifest rectitude and impartiality that they receive the homage of satisfaction from the most disappointed client.

Judge Walker brings these traits of his character to bear equally upon all his dealings with men, and in all the relations of life his actions are guided by the beacons of duty which swing from his judicial censor and illumine the bench.

GEORGE CLARK.

The subject of this sketch was born in Eutaw, Alabama, on the 18th day of July, 1841. His father, James B. Clark, was a native of Pennsylvania, and a lawyer by profession. He removed to Alabama in 1822 and became a distinguished judge in that State where he presided as chancellor for nearly eighteen years, and died in 1873 at an extreme age. His mother was formerly Mary Erwin, a native of Virginia.

George Clark received the best training afforded by the schools of his native town and completed his education at the University of Alabama, where he also studied law; but in June, 1861, he abandoned his studies and enlisted in the Confederate army as lieutenant in the Eleventh Regiment of Alabama infantry, and in 1862 was promoted to the rank of captain. He participated in all the great battles of the Army of Northern Virginia, was wounded at Gaines' Mill, Gettysburg and Ream's Station, and stood in the last defiant line at Appomattox.

At the close of the war he returned to Alabama, and in 1866 was admitted to the bar, and began the practice of his profession at Eutaw; in January, 1867, he removed to Texas and located at Weatherford, but in December, 1868, settled permanently at Waco, where he still resides, in the enjoyment of a large practice.

During the trouble with the Radical incumbents, occasioned by the installation of Governor Coke and the Democratic State ticket, in 1874, he was placed temporarily in charge of the office of Secretary of State under the incoming administration, and was soon afterwards made Attorney-General of Texas, which position he held until 1876, when, his office being vacated by the intervention of the new

Constitution, he was appointed one of the committee to revise the laws of the State. In 1879 he was appointed one of the judges of the Court of Appeals, but resigned in October, 1880, and has since that time devoted himself exclusively to his profession.

In all these official stations Judge Clark while being, perhaps, the youngest man who had ever held either of them in the State, performed his duties with an ability and fidelity which render his career most honorable and brilliant, and he is a man to whom Texas may well look for eminent services in the future. Modest, retired and devoted to the duties of his profession, his qualities and success as a lawyer engage the most implicit confidence of his clients, and invite a large patronage.

His decisions upon the bench of Appeals evince a vigilant and painstaking research, present a clear and conscientious exposition of the law, and an unswerving pursuit of justice. He is a man of great frankness and candor, and so marked are these traits of his character, that the author was, on his first acquaintance with him, disposed to impute to him also an element of captiousness; but he soon found that underneath his open and outspoken exterior attributes, no man possessed a kinder heart, a more courteous gentility, or a keener sensitiveness in regard to the feelings of others, and the ethics of a true gentleman.

He is a lawyer of excellent ability, and loves his profession with the fondness of a devotee. He sees in its ample field more than a mere harvest of fees and political garlands. He sees in it the crops of noble possibilities, of honorable achievement, of virtuous excellence, the highest good of society—the myrtle as well as the laurel. He possesses the habits and powers of intense and vigorous application. His perceptions are acute and concentrative, and his comprehension ready and penetrating, which with an extensive and accurate knowledge of law, and sound judgment, render him a safe counselor and a successful advocate; and as a criminal lawyer, he has few if any superiors in the State.

His able opinion in *Rothschild v. The State*, 7 Texas Court of Appeals, 519, settled a question which had been

held in perplexing conflict both in Texas and other States. This was in regard to the competency of a juror in a criminal case who had formed and expressed an opinion from rumor and general report. The juror was examined upon his *voir dire* in the court below, as follows:—

“Q. Would we have to introduce evidence to change your opinion, or would you still entertain that opinion and act on it?

“A. If the evidence comes in the same as I have heard, of course I would believe it.

“Q. What I want to know is this: You say that you have an opinion—would you change that opinion if we were to introduce some testimony that the man was not guilty?

“A. Yes, sir; I suppose so.

“Q. If we did not do that, your opinion is formed conclusively?

“A. If the evidence is the same as I have heard it.

“Q. Then you have made that opinion an established opinion, granting that the evidence is the same as that upon which your conclusion is formed?

“A. Yes, sir.

“Q. Unless you hear something else, you will maintain the opinion you have?

“A. Yes, sir.”

In reply to a question propounded by the court, the juror stated that if what he had heard was true, then he had an opinion, but if it was not true he should not act upon it.

The district judge overruled the objection for cause, and the defendant having exhausted his peremptory challenges upon others presented, who had made similar statements, the juror was sworn in and sat upon the trial.

The question of the qualification and competency of jurors has been long agitated by the courts, both of England and America, and since the decision of Chief Justice Marshall on the trial of Aaron Burr, who held that “to have formed and delivered an opinion was sufficient to exclude from the jury, but that slight impressions on the mind were not sufficient,” the question has continually recurred as to

what constitutes a fixed and predetermined opinion as distinguished from a mere hypothetical impression. In the case of *Ex parte Vermilyea*, 6 Cowan, 563, Mr. Justice Woodworth says that:—

“To have formed and expressed an opinion from a knowledge of the facts is good cause of challenge, and it can not be material from what source the knowledge was derived, if the bias proceeds from a preconceived opinion, it equally affects the accused. Chief Justice Spencer, in the case of *Vanalstyne*, held that if a juror had formed and expressed his opinion from a knowledge of the facts, or from the information of those acquainted with the facts, it was good cause for challenge, but not if it was formed from mere rumor and report. Judge Iredell declared in the case of *Fries* that ‘whenever a predetermined opinion is formed from whatever motives it creates an improper bias, extremely difficult to get rid of,’ and the same doctrine is held by Mr. Justice Maxey in the case of *The People v. Mather*, 4 Wendell, 229.

In Mississippi the question arose from the peculiar form of the interrogatory put to the juror, who was asked whether he had formed *or* expressed, instead of formed *and* expressed, an opinion, that would influence him as a juror. The court, on referring to the reason given in the books for the conjunctive form of the interrogatory—that a man who has made up his opinion and expressed it aloud is more apt to adhere to it than if he had kept it concealed—say “This reason is not satisfactory. We think that if a juror has made up a fixed opinion from the knowledge of the facts, although he has kept that opinion locked up in his own heart, he is not a competent juror, but if he has only fashioned in his mind an opinion from report, and has not given utterance to that opinion it would not be sufficient to exclude him. An impartial juror is one whose mind is open to receive the impressions to be made by the testimony; one whose mind is poised upon the scales of indifference, and capable of weighing the testimony adduced on the trial in opposition to floating rumors.”

“It is vain,” says Mr. Bishop, “for a man to say, or even believe, that he can judge impartially of a matter which he has already determined; for his mind, which ought at least to be a blank on which the evidence might write its conclusions, is already occupied. Human nature, as developed in the average of men, does not permit this. The juror is to hear, and then say, what he believes; but if he believes before hearing that only which can lawfully affect his opinion, namely, the testimony of witnesses in open court, he is, in legal reason, disqualified to hear and be swayed by the testimony. It is immaterial, therefore, whether the belief, which comes not according to law, is derived from rumor or from testimony to the statements of a more reliable sort.”

In view of these principles and the dictates of justice, Judge Clark reversed the judgment against Rothschild and remanded the case for further proceedings, in accordance with the forms of law. But the victim of the murder was a lone and defenseless woman, who had but recently taken up her abode in the community. The circumstances of the crime were exceedingly aggravating and revolting, and so strong was the prejudice and indignation of public sentiment against the criminal that the technicality, as it was called, of the decision which delayed the execution of public vengeance met with public disfavor and, no doubt, contributed largely to the defeat of his deserved renomination for the office he held — the result of a mistaken public opinion.

A. T. WATTS.

Arthur Thomas Watts, one of the judges of the Court of Commission of Appeals, was born in Covington County, Mississippi, on the 31st of August, 1837. His parents were natives of Georgia, but settled in Mississippi prior to the organization of the State government, and in 1841 removed to Texas and located in Polk County. Arthur received his education at Zion Seminary in Mississippi, and read law under the supervision of Hon. John E. McNair, a prominent judge of that State. He afterwards joined his father's family in Texas, and was admitted to the bar in Polk County in 1859, when he began the practice of his profession; but when the war began in 1861, he returned to Mississippi and enlisted in the Sixteenth Mississippi Regiment, in which he served as a private during the entire continuance of hostilities, in the Army of Northern Virginia. He was with Stonewall Jackson during his celebrated campaign in the valley, and shared in all its glorious victories. He was wounded at the second battle of Manassas, and again at Spottsylvania Court-house, on the 12th of May, 1864.

At the close of the war he returned to Texas and resumed the practice of law. The result of the war had swept away his means, and he found himself in necessitous circumstances; but his energy and determination overcame the difficulties which surrounded him, and success crowned his professional efforts. He was a young man of great personal popularity, and his ability being promptly recognized, he soon obtained a large portion of the practice in his judicial district.

In 1872 he was elected a member of the Thirteenth Legislature, and participated vigorously in the summary

repeal of the obnoxious laws which had been fastened upon the people of Texas by the corrupt and oppressive policy of Radical rule, and in the new legislation necessary to restore their liberty to the people and place the State in its former orbit of freedom and prosperity. He deserved particular credit for his part in effecting an arrangement with the Texas and Pacific Railroad, by which land grants were substituted for the enormous debt due by the State to that corporation, and thereby relieving the people from an intolerable burden of taxation.

In 1874 he removed to Weatherford, where he enjoyed a fine practice, but, in 1878, sought brighter prospects in Dallas, where he had many friends and a more ample field. In 1880 he was appointed one of the judges of the Court of Commission of Appeals, which position he still holds and adorns by his energy, ability and devotion to its duties.

W. S. DELANEY.

William Shelby Delaney is a native of Kentucky, and was born in Union County on the 18th day of September, 1825. His father, Henry Field Delaney, was a native of Virginia, and at one time a prominent lawyer at the Kentucky bar; but abandoned his profession and became a noted clergyman of the Cumberland Presbyterian Church. His mother, whose maiden name was Rhoda Prince, was a native of Princeton, Kentucky, a town founded by her father and named after him. He was one of the first three associate judges of Caldwell County.

The subject of this sketch was afforded good advantages, and graduated at Cumberland University at Lexington, Kentucky, in 1847. His scholastic attainments were of a high order, and he was elected professor, first of mathematics and then of ancient languages in that college. While thus engaged he devoted his leisure time to the study of law, and on being admitted to the bar in 1852 he resigned his professorship and began the practice of his profession. In 1854 he removed to Memphis, Tennessee, and having subsequently located in Nashville, he removed in 1860 from that place to Columbus, Texas, where he resided in the enjoyment of a large and successful practice until his promotion to the bench. As a lawyer Judge Delaney has been remarkably successful. His fine literary education and scholarly attainments enabled him to grasp the principles of law with a scientific comprehension, and to clothe his arguments in cogent and logical terms. While devoting himself to the mastery of the sterner and more solid features of legal science he has cultivated the embellishments of the profession, and establishes his position by a scholarly analogy and purity.

He is a man of quiet and sedate manners, totally devoid of those traits which cherish a fondness for notoriety and a love of display. His mind is cast in the mould of a classic simplicity, and he delights in communing alone with the genius of his profession. The didactic qualities which he acquired and cultivated as an instructor in the chair of science and literature make him an excellent expounder of the principles of law, as verified by the scientific and logical statements of his decisions. But while he is imbued with a spirit of studious inquiry, and is devoted to his profession, he has not sacrificed to its exacting demands the advantages presented to him by other spheres of life. While worshipping at the shrine of Mercury, he has also propitiated the favors of Plutus. He has been a successful planter and man of business, and the reward of his energy is a handsome competence.

In private life his habits conform to his professional ethics, and his refined and unobtrusive, cheerful, yet reserved social qualities commend him as a man of pure and solid character, and his integrity, uprightness and learning make him an excellent judge.

E. B. TURNER.

Ezekiel B. Turner, judge of the United States District Court for the Western District of Texas, was born in the town of Putney, Windham County, Vermont, on the 24th of May, 1825. His parents were also natives of that State, in which his ancestors had settled at an early period, and belonged to the sturdy yeomanry of the country. His education was obtained in the common schools of his native town and in Townsend Academy, which he attended a short period. He studied law in Michigan with his brother, J. W. Turner, and was admitted to practice in the courts of that State in September, 1848. He afterwards held the office of justice of the peace, and was subsequently elected prosecuting attorney for the county of St. Joseph, Michigan.

In 1853 he emigrated to Texas and settled first in Williamson County, where he remained one year, and then removed to Austin and formed a copartnership in law, first with S. G. Sneed, Esq., and subsequently with A. J. Hamilton and F. W. Chandler, which continued until the outbreak of the civil war.

Actuated by the sentiments inspired by his nativity and early training, he was opposed to a dissolution of the Union, deplored the policy of secession, and took no part in the war. With these views he naturally affiliated with the Republican party, and in 1866 was appointed by President Grant to the position of United States attorney for the Western District of Texas, which he resigned to accept the office of attorney-general under the provisional government, and held this position during the period of reconstruction.

In 1871 he was appointed judge of the Thirty-second

Judicial District of Texas, and held this office until the judiciary was made elective, under the Constitution of 1875, when he was elected by the people to the bench of the Sixteenth Judicial District, and was commissioned by Governor Coke in April, 1876. While this was a Democratic district, he was elected as an independent candidate over the regular Democratic nominee by a handsome majority. The district was subsequently changed, and Travis County, which formed a part of the Sixteenth District was declared a special district, and jurisdiction conferred upon its courts to try all cases of perjury to land titles. Under this law most of the celebrated cases known as the "Texas Land Perjury Cases" were tried before Judge Turner in the District Court of Travis County, and his scrutiny and stern enforcement of the law had a salutary effect in putting a stop to perjury of land titles in the State.

In 1880 he was appointed by President Hayes to the office of United States judge for the Western District of Texas, which position he still holds. He was the first United States judge that decided that the act of Congress known as "The Civil Rights Bill," was unconstitutional. This decision was made in the case of *United States v. Washington*, reported in 4 Woods Circuit Court Reports, 349, and was afterwards confirmed by the Supreme Court of the United States in cases involving the validity of the first and second sections of the act of March 1st, 1875, and reported in 109 United States Reports.

Judge Turner has the character of being an excellent judge of law and a man of the staunchest integrity. He was married in 1850 to a daughter of Charles Dodge of Michigan, and this excellent lady, who has so long shared and inspired the brightest sunshine of his life, forms one of that circle of noble matrons whose grace and accomplishments adorn the society of Austin.



John W Harris

CHAPTER VIII.

THE STATE BAR — EMINENT LIVING LAWYERS — JOHN W. HARRIS — J. E. SHEPARD — VOLNEY E. HOWARD — FRANK SEXTON — J. H. REAGAN — T. N. WAUL — W. P. BALLINGER — J. W. THROCKMORTON — JOHN HANCOCK — JOHN SAYLES — N. G. SHELLY — R. B. HUBBARD — A. J. PEELER — WM. M. WALTON — JACOB WAELDER — A. W. TERRILL — GEORGE GOLDTHWAITE — N. W. BATTLE — M. D. HERRING — CHARLES STEWART — ALEXANDER WHITE — THOMAS HARRISON — J. M. ANDERSON — W. S. HERNDON.

JOHN W. HARRIS.

This distinguished lawyer was born and reared in Nelson County, Virginia, of which his parents were also natives. His ancestors for several generations were sturdy and independent farmers of the Old Dominion. The family came from England at an early day and settled on the James River, east of the Blue Ridge, and for the most part within sight of the mountains. Like all of the old English families of Virginia, the Harrisons were proud of their origin, and devoted to the interest of the mother country until its oppressive measures kindled the fires of liberty upon their altars; and when the war for independence broke out they furnished many a valiant soldier to the Continental army.

The subject of this sketch was placed at an early age in a country school which possessed few facilities for the promotion of either progress or ambition, and without even the incentive of rivalry his advancement was slow. But as he approached the years of manhood he began to realize the deficiency of his education, and reflecting with regret upon what he conceived to be due largely to his remissness and want of application, he determined, if possible, to

retrieve his misspent time. But how to accomplish this in the most speedy and effectual manner, and what course of life he should mark out for himself, were questions necessary to be decided at once. He had been reared on a farm, in the midst of a community of farmers, but his taste and experience taught him that this calling would not satisfy his newly awakened ambition and aspirations, and he determined to prepare himself for the study and practice of law.

Armed with this resolution, which was but intensified and strengthened by the difficulties that beset his way, he entered with vigor and zeal upon the chosen path of his destiny. The first step necessary to the most happy accomplishment of his design, was to acquire a collegiate education. But how to do this was a question of more serious import than any which had yet presented itself. His father's family was large, and the income of his farm was small. He could render him no material assistance. But it is the characteristic of genius, however trammelled by difficulty, to break forth from the gyves of untoward circumstance, and, spreading the wings of resolution, soar away triumphantly to the sunny fields of success. Young Harris determined to rely upon his own resources and educate himself. His mother had given him a small body of land. This he made available to some extent, and at once put his plans in operation. In the fall of 1830 he entered Washington College (now Washington and Lee University) at Lexington, Virginia, in which he pursued his studies for two years with the utmost diligence and success. Having at the end of this time casually met some acquaintances who were attending the University of Virginia, he was advised by them to complete his education there; and while the change, in consequence of the increased expense which it entailed, was more compatible with his ambition than with his means, he was so much impressed with the superior advantages which the University afforded that he again bade defiance to fate, and in September, 1832, entered that celebrated institution, in which, for five years, he prosecuted his studies

with close and vigorous application. During this time he graduated in six departments of the University, including that of law, in which he attained distinguished proficiency.

Soon after leaving the University he obtained license to practice in the courts of his native State; but the *viginti annorum lucubrationes*, which custom at that time required of a young man at the bar of Virginia, however competent he might be, before he could expect to be entrusted with important cases, caused many talented young lawyers to seek more propitious and less ceremonious fields. This conventional and arbitrary restraint was particularly repugnant to the ardent spirit and impulsive vigor of Mr. Harris, and in the fall of 1837, within a few months after leaving the University, he immigrated to Texas and located in Brazoria County, near the mouth of the Brazos River, where, in January, 1838, he began the practice of his profession.

This county was at that time, perhaps, the most populous and wealthy in the Republic, and offered a most promising field to the legal profession. Titles to real estate were often conflicting and uncertain, and the courts were thronged with adverse claimants seeking the adjustment of their rights. The professional services of Mr. Harris were brought into immediate demand. His energy and talent engaged the attention and confidence of clients, and he soon found himself immersed in the duties of an extensive practice.

Soon after he had settled in Brazoria he became a member of the law firm of Wharton & Pease, and after the death of Colonel Wharton, which occurred in 1839, the firm of Harris & Pease became one of the most noted in the Republic, afterwards one of the most distinguished in the State, and continued until Mr. Pease was elected Governor of Texas in 1853. When Mr. Harris came to the bar of the Republic it contained but four judicial districts, which extended over the vast expanse of its inhabited territory, and it was arranged between him and Mr. Pease that the latter should remain permanently in Brazoria while he should attend the courts of the six counties composing the district, and they soon found themselves employed in most

of the important cases that came before the various courts of the district. They began their practice in the Supreme Court in 1840, when it was first organized. In 1839 Mr. Harris was chosen to represent the county of Brazoria in the first Legislature that convened at Austin, which had recently been selected as the capital of the Republic. During the canvass he endeavored to impress upon the people the propriety of abolishing the civil or Mexican law then in force, which was written in a language unintelligible to a majority of the citizens, and contained in books, for the most part, beyond their reach, and urged the adoption of the common law as the law of the land. They seemed to be indifferent, however, as to which system should prevail, and elected him untrammelled by any positive public expression in regard to the measure. But he made it the chief object of his legislative mission. Although there were several other eminent lawyers in the House of Representatives, he was appointed by Hon. David S. Kaufman, then Speaker, as chairman of the Judiciary Committee of that body. In due time he introduced a bill to repeal the Mexican laws and to adopt the common law, and procured the recommendation of its passage by the Judiciary Committee, it being opposed by only two members, who made, however, no adverse minority report. Considerable opposition to the bill was soon manifested among the lawyers of the House, based chiefly upon the ground that the common law was not sufficiently liberal in its provisions regarding the rights of married women. This opposition was distrusted by General Houston, who gave his support to the measure, and its adoption was then assured. But to obviate all grounds of objection, Mr. Harris added the feature regulating marital rights, and the bill was passed. This feature was incorporated five years later in the first Constitution of the State, and was pronounced to be a grand discovery of the age. Similar provisions have since been adopted by many of the States of the Union.

It next became necessary that general statutes should be enacted in modification and aid of the common law to make it conform to the state of society and to the government

and polity of the Republic, as had been done both in England and in the States. In view of this Mr. Harris had procured a copy of the General Statutes of Virginia, which had been originally enacted in England and adopted in Virginia during the period of the American Revolution. These had been ably construed by the courts and their meaning and import well ascertained and settled, and Mr. Harris caused exact copies of them to be made, which he introduced as bills in the House of Representatives, and they were generally passed without amendment. But in civil cases the common-law system of pleading was rejected, and the proceeding by petition and answer was retained. The distinction between law and equity was discarded, and the courts were empowered to administer both without separate dockets, and with the same form of proceedings, and this was found to be a decided improvement upon the old system, which maintained separate courts of law and chancery, as already described in a preceding chapter.

In 1846 Mr. Harris was appointed Attorney-General of the new State by J. Pinckney Henderson, the first Governor of Texas after its admission into the Union. This appointment was made without the least solicitation on his part, or of any of his friends, but, notwithstanding the inadequate salary, he accepted the position. He discharged the duties of this office with signal ability, and gave such general satisfaction that Governor Wood, the successor of Governor Henderson, reappointed him to the position, declaring, in answer to an urgent application for the office by one of his strongest supporters, that the interests of the State required the services of Mr. Harris.

He was married in 1852 to Mrs. Annie P. Dallam, of Matagorda, Texas, daughter of Hon. S. Rhodes Fisher and Mrs. Ann P. Fisher, formerly a Miss Pleasants. They were both reared in Philadelphia, and emigrated to Matagorda at the early period of 1832. This talented and noble lady has adorned his home with the most admirable graces and accomplishments of her sex.

In 1854 Gov. Pease appointed him in conjunction with James Willie and O. H. Hartley, to revise the laws of the

State. The penal code and code of criminal procedure were prepared by Mr. Willie, to the provisions of which Mr. Harris gave his assent without any material alteration of their features. The task of preparing a code of civil procedure was assigned to Mr. Hartley, and that of revising the statutes to Mr. Harris. They performed their duties, but the Legislature seemed to be satisfied with the practice as it existed and with the general statutes previously enacted, and the reports of Messrs. Harris and Hartley never received legislative action.

Mr. Harris has always been a Democrat of the purest school. Educated amid scenes impressed with the very genius of Mr. Jefferson, and under instructors whose sentiments were moulded by his association and influence, he drew his political inspirations from the very atmosphere in which the great statesman lived and moved, and imbibed his principles from the fountains which he struck from the rock of human liberty. The Civil War he deplored as unnecessary. He was devoted to the Union established by our fathers, and felt all the indignation of a true Southerner when he saw it fall under the control of a party avowedly inimical to the great principles upon which it was founded; and while he was not in favor of secession as the proper mode of redress, he accepted it as a fixed and accomplished alternative, and gave his support to the Confederate cause.

When the storm of revolution had passed away and the courts were reopened, he resumed the practice of his profession in copartnership with Marcus F. Mott, Esq., and subsequently associated with Branch T. Masterson, Esq.; but his private fortune was now large and he confined his practice chiefly to important cases in the higher courts.

In 1873 he was elected to the House of Representatives of the Fourteenth Legislature from the counties of Galveston, Brazoria and Matagorda. One of the most important questions that came before this body was a proposition to amend the Constitution of 1869, which had been framed under the auspices of military rule by persons inimical to the views and sentiments of the people, and largely by per-

sons who had no permanent interest in the State, and which had been adopted by the people under the constraint of a still more distasteful alternative. They had either to accept it or remain indefinitely under the galling yoke of military rule. The Fourteenth Legislature, being largely Democratic, was desirous of annulling a Constitution which had been thus forced upon the people and of affording them an opportunity of adopting one of their own choice.

The Constitution of 1869 permitted amendments to be made by a joint resolution of the Legislature proposing the amending features and their submission to the vote of the people. Under this provision, Mr. Harris, who was a member of the Committee of the House upon Constitutional Amendments, conceived the idea of readopting in this manner the Constitution of 1845, which had given general satisfaction, which had been thoroughly construed by the courts, and which Mr. Webster had declared to be the best that had ever been written. Taking this Constitution as a basis, and changing its features with a sparing hand, he caused it to be carefully printed, and then submitted it to each House. Its passage was recommended by a committee of the House, and afterwards by a joint committee of the two Houses; but a strong feeling had in the meantime arose in favor of calling a constitutional convention, which finally prevailed, and the convention of 1875 convened and framed the present Constitution of the State. This Constitution was in some respects unfortunate. It has never given satisfaction, and under its provisions amendments seem almost impossible.

The most important cases in which Mr. Harris has been engaged were those of *Hosmer v. De Young*, 1 Texas, 754, and *League v. De Young & Brown*, 2 Texas, 477; and as the questions involved in these cases were important in their bearing upon the origin and validity of a large number of land titles in Texas, the circumstances of the latter case and the points raised by the respective counsel, taken from the brief of Mr. Harris, are given in full.

The laws of the Republic of Texas gave to each head of a family, who was a citizen at the date of the declaration

of independence, one league and labor of land, and boards of land commissioners, referred to in a former chapter, were elected by Congress for each county, whose duty was to hear the evidence of applicants and to grant certificates to them for such quantities of land as they were respectively entitled to receive under the provisions of the law. But it soon became apparent that some of those boards had corruptly issued certificates to persons who were not entitled to them, and to fictitious persons, for many millions of acres of the public lands.

Transfers of these certificates were proven, or purported to be proven or acknowledged before notaries public, and were duly certified for registration. The holders of these fraudulent certificates located them, and required the surveyors to survey the lands on which they were located.

President Lamar, foreseeing that the vast public lands of the Republic would soon be appropriated by these fraudulent certificates unless he should interpose his power to prevent it, issued his proclamation prohibiting the granting of patents upon all land certificates until Congress could meet and pass such laws as should be found necessary for the protection of the public domain.

When Congress met, it passed the "Act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants."

Under this act three land commissioners were elected for each county in the Republic, who constituted the boards of land commissioners of their respective counties.

Besides these, Congress elected three commissioners for the district east of the Trinity River, and a like number for the district west of that river (commonly called boards of traveling commissioners), whose duty it was to go to each county in their respective districts, and in connection with the county commissioners, to investigate the proceedings of the prior or first boards, and ascertain what certificates had been properly issued.

Such as they found to be legal and genuine, they were to report to the commissioner of the land office, so that patents might be issued upon them.

The law prohibited under heavy penalties the surveying, or patenting of lands upon any certificate not thus recommended.

It also provided that the owner of any unrecommended certificate might sue in the District Court of the county in which it was issued, to establish its validity.

Hosner and League, each holding a certificate which the new boards of commissioners had failed to recommend as genuine, or legal claims, and which had not been established by suit in the District Courts, respectively made applications to the surveyors for the location and survey of their certificates. This, under the law, the surveyor refused to do. Each then applied to the District Court for a *mandamus* to compel the surveyors to make the surveys. These applications being refused, the holders of the certificates applied to the Supreme Court of the State, and the cases were there argued for the appellees by Mr. Harris, as Attorney-General, and the judgments of the District Court were affirmed.

Thomas M. League, took his case by a writ of error to the Supreme Court of the United States, before which it was ably argued by George Wood, Esq., of New York, for the plaintiff, and by Mr. Harris, for the defendant, who was employed by the Governor as the only attorney to represent the interest of the State.

In this case the counsel for the plaintiff in error contended that the Republic of Texas was under an obligation amounting to a contract, to make grants of lands to claimants who came before the first board of commissioners and made the proof prescribed by the Act of the Republic of Texas of 1837.

2d. That the grant of the certificate in question by the first board — a tribunal of competent authority, was in effect a judicial decision which was final, and, whether fair, or fraudulent, the validity of the claim could never be successfully impeached, nor could it ever be inquired into except upon appeal, or by writ of error, for which the law had made no provision.

3d. That the certificate constituted a perfect right to the

quantity of land awarded, and all legislation of the Republic of Texas appointing new tribunals to examine into the genuineness and legality of such claims, or to limit the time within which the holder or assignee of such certificates might demand a survey and patent, was void, because it impaired the obligations of a contract, and that the eleventh section of the Constitution of the State of Texas declaring all certificates for head-right claims issued to fictitious persons, or which were forged, were null and void from the beginning, and that the act providing that the District Courts should be opened till the 1st day of July, 1847, for the establishment of such unrecommended certificates, was also null and void, as it impaired the obligation of contracts.

The points made by Mr. Harris, the counsel for the defendant in error, were:—

1. That the laws of Texas, enacted while she was a Republic, could not be regarded as inhibited by that provision of the Constitution of the United States which says “that no State shall pass any law impairing the obligation of contracts.” Nor could the eleventh article of the Constitution of the State be so regarded, for this was also adopted during the existence of the *Republic*, and it formed a part of the treaty between the two governments for the admission of Texas as one of the States of the Union.

It may be said that this article was offered by Texas as an indispensable condition of the contract or treaty for annexation, and was accepted by Congress, which is not prohibited from enacting laws or making treaties impairing the obligations of contracts.

2. That there was no obligation on the part of the Republic to issue the certificate in question; that the granting of the certificates was based upon no consideration, which is an indispensable requisite of every legal and valid contract; and that the laws of the Republic, and the eleventh article of the Constitution complained of were remedial laws, which could be altered, or even repealed, by the power that made them; and that the plaintiff in error had certainly no cause of complaint against the eleventh article of the Constitution, since that revived in his favor a remedy which he had lost

by limitation in failing to institute suit before the 1st day of January, 1844, and since he had also lost this constitutional remedy by failing and refusing to accept its provisions.

3. That the Congress of the Republic had full power to pass laws creating new boards of commissioners, or other tribunals to revise the acts of the first boards, granting fraudulent certificates, and to reverse their decisions; that had these certificates been fraudulently granted by the highest courts of the Republic the legislative power could have created new tribunals to revise and reverse their fraudulent judgments.

4. That this was a suit against the State without its consent.

5. That the plaintiff, by his own laches, had lost his right to sue in the District Court for the establishment of his claims, and that after all right of action had been barred he could not make application to the District Court for a *mandamus* to compel the surveyor to survey the land.

6. That if while Texas remained an independent Republic her Congress had passed laws annulling all these certificates, such would have been the effect of these laws.

It will be seen by the decision in *League v. De Young et al.*, 11 Howard, 200, that the Supreme Court of the United States sustained these several positions taken by Mr. Harris, the counsel for the defendant in error.

This case was avowedly taken to the Supreme Court of the United States as a test case, with the hope of obtaining a decision to the effect that the statutes complained of and the eleventh article of the Constitution were repugnant to the Constitution of the United States, and consequently null and void.

Had such been the decision it is easy to see how disastrous would have been the consequences. The court in its opinion says: "Immense numbers of these certificates were soon put in circulation, either forged or fraudulently obtained, which, if confirmed by surveys and patents, would soon have absorbed all the vacant land of the Republic."

Mr. Harris was employed in 1872 by Gov. Davis to assist

Hon. William Alexander, then the attorney-general of Texas, in the defense of a suit which had been instituted by the International Railroad Company *v.* A. Bledsoe, controller of Texas.

The object of the suit was to compel the controller to countersign and register claims to a large number of the bonds of the State, claimed by the company under the act of the Twelfth Legislature, passed August 5, 1870.

This was entitled "An act to incorporate the International Railroad Company, and to provide for the aid of the State in constructing the same."

The aid provided was the donation of the bonds of the State to the company of ten thousand dollars per mile, the road to be constructed from the northeast to the southwest boundary of the State, a distance of six hundred miles. These bore interest at the rate of eight per cent, payable semi-annually in the city of New York.

The bonds had been signed by the governor and treasurer, and were required by the provisions of the charter to be countersigned and registered by the controller. This the controller refused to do. The company after but little delay made application to the District Court of Travis County for a *mandamus* to compel the controller to countersign and register these bonds.

The defendant appeared and demurred, generally and specially, to the petition, and among other special causes assigned the following: —

1. That it was, in effect, a suit against the State.

2. That the controller could not be compelled to exercise his official discretion in any particular way.

The defendant further answered that the passage of the act of incorporation was procured by means of fraud, bribery and corruption, and was therefore null and void.

In the argument before the Supreme Court the points mainly relied upon by Hon. George Clark, the attorney-general, and Mr. Harris, the counsel for Bledsoe, were: —

1. That the duty imposed by the act of incorporation required on the part of the controller an exercise of discretion

or judgment, and that a *mandamus* would not lie to control his discretion.

2d. That under the Constitution, the court had no power to compel an officer of the executive department, nor any member of the body of magistracy of said department, whose powers are defined by the Constitution, to perform an official duty.

The duties of the Governor, of the Treasurer and of the Controller being defined by the Constitution, it was contended in argument by the counsel for the Controller, that each of these was supreme in his own department.

“If this position be regarded as untenable,” say the counsel, “then, let us suppose that a peremptory *mandamus* had been awarded against the Controller, which he refused to obey. What then would be the remedy against him to enforce the judgment of the court? It must have been to attach the Controller for a contempt of court, and to imprison him till he complied with its order.

“Let us further suppose that the State Treasurer had refused to sign the bonds, which he was required to do by the charter of the company, and had also refused to obey a *mandamus* of the court to compel him to sign them, then, why should not he, like the Controller, be attached and imprisoned for contempt of court?

“Let us further suppose that the Governor of the State had refused to sign them, and had also refused to obey a *mandamus* requiring him to subscribe his name as Governor to these bonds — would he not, for contempt of court, have been arrested and sent to jail with the Treasurer and Controller, who were already there?

“We must suppose, that if such were the law, the Governor, who was the chief executive officer of the State, whose main duty it was to see that the laws were faithfully executed, would, as a good law-abiding citizen, have gone meekly to jail.

“Let us also suppose that these three high officials, after trying for a time the gloomy walls of a prison, should upon consultation have determined that it was better to execute the bonds, and thus preserve at least their own freedom —

and they had executed them accordingly. Would this have ended the trouble? No! for the Legislature might still refuse to make an appropriation to pay the bonds. What then must be done? Would the judge of the District Court of Travis County have awarded a mandamus to the Legislature to compel that body to make an appropriation adequate to meet the semi-annual interest and the annual sinking fund?

“In case of refusal, would he have sent the members of the Senate, and those of the House of Representatives, constituting the officers of the legislative department of the government, to the Austin jail, to which he had recently consigned the Governor, Treasurer and Controller of the Executive Department?

“Would not this have amounted to a combination of the powers of the legislative, the executive and the judicial departments in one man — the judge of the District Court of Travis County? And this Mr. Madison, the great expounder of constitutional law, said was the very definition of tyranny.

“The position becomes absurd, when it is borne in mind that the members of the executive department and those of the Legislature, are elected by the people, while the judge of the District Court of Travis County, awarding the *mandamus*, obtained his office by the appointment of E. J. Davis, at that time the Governor of Texas.”

In this connection it may be remarked that this district judge belonged to that numerous class of officers, then commonly denominated carpet baggers. How humiliating to the Governor! How galling to the people of Texas! would have been the exercise of *such powers, by such an officer!!*

The great success which Mr. Harris has attained in the practice of law and in all the affairs of life may be largely attributed to his preparatory course and early training. He made success the goal of his youthful ambition, and kept that one object constantly in view. He was taught at an early age to rely upon his own exertions, and he recognized that his attendance at the university was the great

opportunity of his life. His limited means precluded him from those indulgences which too often dissipate the efforts of genius, and mar both the advantages and prospects of the student. His observations led him to note that those students who enjoyed the prospect of large inheritances, and who were prodigal in their expenditures, made the slowest progress in their studies; and he learned to appreciate the advantages of the restraints which poverty places upon the diversions of pleasure. He thus acquired the habits of labor and self-denial without which the highest ambition and the brightest genius will fail to reach the goal of success, especially in the exacting field of law.

These qualities, thoroughly wrought into his character, he brought to bear upon the study and practice of his profession. His first step is to thoroughly learn the facts of his cases and then to study the applicable law. When this is done and he is satisfied with the merits of his side of the controversy, he enlists every energy in the cause and identifies himself with the interests of his clients.

He is more of what may be called a text than a case lawyer. He relies more upon the principles of law than the power of precedent, which can not always comprehend the varied colors and features of fact, or gather them within the broad folds of parity or analogy. While he is careful and painstaking in the written preparation of his cases, he is remarkably forcible and effective in oral argument, both before the court and the jury, and it has been the constant practice of his associates to concede to him the privilege of making the closing argument.

His social characteristics are no less cultivated than his professional attributes. He is a man of courteous manners, refined ethics, and engaging address. Kind-hearted, generous and keenly sensitive to the respect due to others and to himself, he blends the cultured uniformity of the well-bred Virginian with the more intensified qualities of the true Texan.

JAMES E. SHEPARD.

This venerable lawyer and excellent gentleman was born in Matthews County, Virginia, on the 24th of April, 1817. His father Seth Shepard, a native of Connecticut, was of Scotch descent, and was an eminent physician. His early advantages were liberal, and he was educated at Miami University, at Oxford, Ohio. He began the study of law in 1836 with W. R. Beaty at Greenupsburg, Kentucky, where he was residing with an uncle, and was graduated from the law department of the Ohio University at Cincinnati. He was admitted to the bar at Flemingsburg, Kentucky, in the spring of 1838 and entered at once upon an encouraging practice. In November, 1846, he removed to Texas and located at Brenham, in Washington County, where he has since chiefly resided. He formed a copartnership at Brenham with his brother, C. B. Shepard, which continued many years, and until the latter retired from the practice. He then associated with him several young men, some of whom have attained distinction at the Texas bar.

He was a member of the Legislature of Texas in 1850, and served a subsequent term prior to the war. In 1861 he was a member of the convention which severed the relations of Texas with the Union, and, being an ardent Southerner in his views and sentiments, he promptly enlisted in the service of the Confederacy, and was made lieutenant-colonel of the Sixteenth Regiment of Texas infantry. While still at the head of his regiment he was elected in 1864, without his knowledge, judge of the Third Judicial District, and accepted that position.

He was a member of the reconstruction convention in 1866, and was during that year re-elected, without opposi-

tion, to the district bench, but was removed in 1867 by the military power as an impediment to reconstruction. He was then appointed dean of the law faculty of Baylor University and held that position for several years, and until the suspension of the law department of that institution, which was necessitated by the scanty attendance occasioned by the stringency of the times in financial matters.

In 1873 he removed to Austin and formed a copartnership in the practice of law with J. G. Searcy, which continued about five years, after which he returned to his old home at Brenham, where he is still residing and practicing his profession with a vigor and activity rarely found in one of his years. Judge Shepard is a man of great integrity, firmness and independence of character, and as a judge was able, upright and pure, readily comprehensive of every point upon which a proposition hinged, liberal in his interpretation of law for the advancement of justice, and watched the poise and inclinations of its scales with a conscientious eye.

He had in early life acquired a thorough knowledge of the rudiments and fundamental principles of law, and wove them into the elements of his own judgment and perception. As a lawyer he is full worthy of the distinction he has enjoyed and of the success with which his efforts have been crowned. His mind is active, vigorous and steady in its grasp of the substance of a proposition, and he never loses sight of the points upon which the merits of a question hinge.

Another source of his professional strength is his capacity for captivating the minds of the jury; his methodical arrangement of facts, his forcible illustrations, earnestness of manner, boldness of assault, and complacent, though scathing rejoinder and repartee gain for him both the attention and the favor of the jury. He knows how to avail himself of every consideration which tends to awaken the feelings of sympathy; not, however, by specious declamation or the cunning arts of suasion, but by an appeal to the nobler passions of men, their sense of justice, their sentiments of moral rectitude, and to the just and full

comprehension which he quickens in the minds of his hearers by his accurate and lucid interpretation and sound judgment. Ex-Governor Roberts lately told his law class in the University of Texas, that Judge Shepard was one of the few lawyers in the State whose statement of a case was an argument in itself, and it may be said of him that he is one of the few whose overflowing humor and overweening propensity for ludicrous anecdote and badinage never impair the most implicit faith in his sincerity, nor weaken the force of his most subtle and gravest arguments. It was not with him as Dr. Johnson said it was with Shakespeare, an irresistible fondness for a mere quibble which allured him from the dignity and profundity of his disquisitions, nor "the Cleopatra for which he lost the world and was content to lose it;" but it is the aroma which springs from the blossoms of his genius and the flowers of his philanthropy; and blending the force of his wit with the power of his wisdom he is at all times a formidable adversary. He is also one of the few lawyers who have maintained a high position at the bar and upon the bench with a divided allegiance to their profession. In addition to his successful practice he has been engaged in mill enterprises and irrigation schemes—rivals which the jealousy of law would not have tolerated in an ordinary mind.

Some of the most important cases argued by Judge Shepard, and which are illustrative of his professional qualities, are *Hall v. McCormick*, 7 Texas, 269, which involved the question of the necessity of presenting to an administrator the claim of a judgment which has lost its lien; and *Atkinson v. The State*, 20 Texas, 522, in which he discussed the nature and application of the ingredients which distinguish manslaughter from murder.

In private and social life Judge Shepard is noted for his kindness and congeniality. His manners are courteous and suave, and indicate a breast full of the noblest impulses. He was married in 1839 to Miss Martha J. Andrews, of Flemingsburg, Kentucky, a lady in whose heart every noble sentiment finds a reciprocity, and with whom he has enjoyed a long and felicitous union.

VOLNEY E. HOWARD.

The subject of this sketch was a native of the State of Maine, where he received a finished education and was thoroughly prepared for the profession of law. He emigrated to Mississippi about the year 1830, and located at Jackson, where he entered upon his profession, and rose so rapidly in the confidence and esteem of the bar and people that in 1837 he was chosen reporter of the decisions of the High Court of Errors and Appeals.

His reports are distinguished for lucid and systematic arrangement, and his captions and syllabuses are comprehensive, clear and exact. He also took a prominent part in the politics of the day, and was for several years editor of *The Mississippian*, a newspaper published at the capital and the leading Democratic organ of the State. He was a vigorous and caustic writer, and attacked with scathing rebuke and sarcasm every measure which he deemed false to the interest and welfare of the people, while he, with inveterate alacrity and eloquence advocated the true principles of his party. His paper wielded a great influence throughout the State, and the force and ability with which he inculcated his views impressed them deeply upon both public policy and private enterprise.

Mr. Howard is a man of extensive culture and a lawyer of great ability, while the eminent traits which adorn his character have rendered him at all times popular with the people and have given him everywhere a high professional, political and social standing. Like Mr. Prentiss, he came to Mississippi without means and without friends, and with the suspicion and prejudice which at that time existed in the minds of the Southern people against all natives of New England staring him in the face, and which nothing

but the most amiable character, the most upright conduct and eminent merit could have so soon and so completely dispelled as to admit him to the full confidence and to the warmest support and patronage of the people.

In the year 1845, while in the meridian of his professional success and popularity in Mississippi, Mr. Howard was allured by the spacious fields of the young republic of the West, and removed to San Antonio, Texas. Here his abilities were soon called into the public service, and he was chosen a member of the annexation convention, and took an active part in framing the Constitution of the State. He was strenuously opposed to the introduction of any novel and experimental features in the organic law, or any which savored of class legislation. He opposed the clause excluding ministers of the gospel from political office, and likewise any extension of the liberty or license of the press. In his opposition to the latter measure he said: —

“It is easy to indulge in declamation upon liberty, but to understand the principles of liberty, and to know the measures necessary to its security, is a somewhat different matter. Sir, what is the liberty of the press? We have heard a great deal said about it here, but no one has attempted to define it. I will not give you my own crude definition, or the speculation of my own views, but those of the wisest sages, of the most enlightened jurists and statesmen. The liberty of the press, then, is defined to be the right to publish our sentiments and opinions, unrestrictedly, being afterwards responsible for the abuse of that right. That is the liberty of the press, and there is not one jurist or statesman who has defined the liberty of the press as the right to publish without responsibility. It would be extraordinary. One of the principal objects of government is to protect the liberty of the person, and property. But would the government be perfect, would it answer the ends for which it is created, if it did not protect reputation and character also? Are we to say that reputation is less dear than property? To a high-toned man it is dearer than life itself.

“ We have heard a good deal of declamation about the antiquated doctrines of the common law, and the tyranny of English decisions in relation to the press. It comes with a very poor grace from Americans. The liberty of the press, like almost all the principles of liberty, is the growth of English culture. It first took root in English soil. When printing was first discovered, it was considered entirely an affair of state, and its regulation was confined to the crown. This jurisdiction in England was in process of time placed in the Star Chamber. There it remained until the Revolution and the Long Parliament of 1641, in the time of Charles the First, where it was assumed by Parliament itself, which exercised it until the restoration of Charles the Second, soon after which the censorship was revived by an act of Parliament, which continued in force until the year 1694. But in the meantime the English mind became aroused upon the subject, and the act was allowed to expire by its own limitation. Upon that negative basis the freedom of the press rested, and thus it remained, until the passage of the act which gave juries the right to determine the fact and the law as in other cases. The rights of the press were freely discussed and defined upon the trial of the publisher of Junius, and more recently in the speeches of Erskine, some of which, for variety and purity of principles, for profound thinking and masterly eloquence, are unsurpassed by anything of the kind since the days of Cicero. And what were the principles established by him? For what principles did Junius contend? That every man in the discussion of public affairs had the right to publish what he should think proper, being afterwards responsible for the abuse of the privilege. Thus stood the right prior to the American revolution. Now, what is our own history upon the subject? When the American Union was framed, the English principles upon the subject of libel were the principles of this country. In 1798 that measure occurred which cut so large a figure under the administration of John Adams, of punishing editors for their comments upon the conduct of the President, members of Congress, and officers of the government.

And here let me remark that it was not so much the exercise of the power, as the odious manner of its exercise, which produced excitement. Jefferson opposed it, and rallied around him what was then called the Democratic party. Now, for what principle did Jefferson contend? For the right to publish whatever a man pleases, without any check? Did he say that the liberty of the press excluded the idea of responsibility? I have never seen from the pen of Jefferson the expression of any such sentiment. There has never been an intimation in the whole course of the history of the subject that a man should have the right to publish what he pleases without being afterwards responsible. It has indeed been constantly contended that no censorship should be exercised over a man as to what he should publish; but if he should publish what is improper or injurious, it has been unanimously admitted that he should be held responsible. Thus for the principles of the English law. American principles go a step further, and Mr. Jefferson, when he went into power, contended that 'in all prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, the truth thereof may be given in evidence.'

."But with regard to private life a different principle has been maintained by every American statesman of any influence. To that extent I will go. I would propose to amend by adding, after the word 'evidence,' the following: 'But in other cases the truth shall not avail as a defense, unless published from correct motives and for purposes of public good.' What is the only difference here? One party contends that in private affairs the truth should be published at all times, without regard to public good or inconvenience, and that if the truth is made out, it should be ample protection. Now I deny that there is any such principle known to the law. I maintain that it would be destructive of the liberty of the press itself; for liberty means restraint—the protection of the right and the restraint of the wrong. Now, is it right, under all circumstances, that the affairs of private life should be published

to the world? * * * Is it right that innocence and misfortune should be needlessly held up to public scorn and ridicule, and their fortunes in life perhaps forever blasted by an impudent caterer for the love of slander inherent in the human breast? I look upon such a person as an assassin in the dark, too vile to move in the face of day. Discuss public affairs as fully as you will; handle public men with what severity you choose; subject them to the keenest scrutiny; but let the liberty stop there. If an individual is guilty of a great outrage, it may be necessary and beneficial to the public to publish the facts; but in such cases ample protection is afforded. It is an old adage, and a true one, that 'the truth may not be spoken at all times;' there are many things that need not be told. I say, then, that the government which fails to protect character from unjust and unprovoked aspersion is as imperfect as one that fails to protect life. The one is as dear as the other, and ought as much to be placed under the protecting shadow of the law. By nothing we can do here, could we hope to prevent the licentiousness of the press to any great extent. But I am not willing, in the fundamental law of the land, to offer a reward for licentiousness. I would at least inculcate a moral; whether it can be practically enforced or not, is no business of ours. The danger to the people, and to the press itself, is from its license. There is no adequate remedy, but this is the only one in our power. It is not my purpose to declaim here about the glorious privileges of the press; God knows it has privileges enough. And many a man, while declaiming in the name of Democracy, has stabbed liberty to the heart. Who were louder in eulogizing liberty than Robespierre and Marat? yet who did more to sap its very foundation in Europe?

"Let us understand the import of the principles which we are adopting. The article, as it stands in the report, leaves it to the Legislature to say whether or not it shall be competent to permit the truth to be given in evidence, in case of publications relating to private affairs. I propose to control the Legislature in that respect. I think some restraint would be salutary."

Soon after the adjournment of the convention Mr. Howard was elected to the Senate of the State, and in 1849 was chosen to represent the Western District of Texas in the United States Congress, in which he took an active part in the interest of the Missouri Compromise and other important measures which were at that time agitating the waters of national politics. At the expiration of his Congressional term, in 1852, he was sent by the President of the United States to California as an agent to settle land claims and other matters, and has never returned to Texas; but, having settled there, has acquired much additional reputation in his profession.

F. B. SEXTON.

Franklin Barlow Sexton was born in New Harmony, Posey County, Indiana, on the 29th of April, 1828. His father was a native of Connecticut and was a descendant of one of the old families of that State. While in the tenth year of his age he removed with his father's family to San Augustine, Texas, where his father died in 1841 and left him in the sole care of his mother. She was a lady of deep and devoted piety and reared him in the strictest and most careful manner, and to her he owes all the inspirations of his youth and perhaps the achievements of his after years. His educational advantages were good, and he graduated at the Wesleyan College, San Augustine, Texas, in 1846. He afterwards served a short apprenticeship in a printing office, and then studied law in the office of J. Pinckney Henderson and O. M. Roberts. Having received a thorough legal training under the supervision of these distinguished gentlemen, who were at that time partners, he was admitted to the bar in 1848, and immediately began the practice of law at San Augustine, and soon acquired a professional reputation which grew to a high standard of eminence.

The teachings of his mother, who was a Georgian, his education and associations, early imbued his mind with the warmest Southern sentiments and staunch Democratic principles, and he accepted the alternative of secession presented by the "irrepressible conflict" with all the enthusiasm of his nature. In 1861 he entered the Confederate service, and during the same year was elected to fill a vacancy in the Texas Senate, but did not return in time to take his seat. In 1862 he was elected to the Congress of the Confederate States, and was zealous in his support of all measures which promised to promote the Southern

cause and bring triumph to the Southern arms. He was ardent and unswerving in his devotion throughout the war to the principles which he cherished, and at its close, holding fast to his honor and dignity, he promptly accepted the inevitable consequences of its result, and returned to the practice of the law at San Augustine where he again engaged in a large practice. In 1872 he removed his office to Marshall, where he has since continued to reside in the enjoyment of one of the first legal reputations in Eastern Texas.

In 1876 he was chosen a delegate to the National Democratic Convention which assembled at St. Louis and nominated Mr. Tilden for the presidency. Since that time he has devoted himself exclusively to the practice of his profession; yet, has cherished a lively interest in political events, and especially in those affecting the welfare of the South and of his State.

Mr. Sexton is a man of great moral and personal integrity, and pursues the even tenor of a career adorned with ability and genius and arched over with the purest Christian virtues. He is a devout communicant of the Episcopal Church, and has been an active member of the Masonic fraternity since he was twenty-one years of age, which has honored him with the highest official positions of the order. He has been grand master, grand high priest and grand commander of the Knights Templar.

A biographer often finds the currents of character flowing from the inspiring fountains of a mother's affection, and their course and vigor shaped by the encouragement of a noble wife. The virtues of these have formed the noblest themes of both romance and reality.

Xenophon, in his elegant memorabilia of Socrates, relates a beautiful allegory describing the choice of Hercules between the superficial allurements of sensuality and the real charms of virtue. The youthful hero, having arrived at the age of discretion, sought the stillness of solitude for the purpose of reflecting and deciding upon his course of life, and while in a state of perplexity as to whether he should enter upon life by the way of virtue or the path of vice, he was approached and accosted by two women of remark-

able stature and appearance. The countenance of one of these ladies glowed with benevolence and the modest smile of amiability. Her manners were dignified and gentle; every feature betokened the highest culture of decency and gentility. She wore no ornaments. Her native charms needed no artificiality to add to their serene splendor. She was adorned with neatness and elegance, and all her garments were of the purest white.

The other was not without beauty; but, notwithstanding her rouged cheeks and carmined lips, her countenance had the appearance of being sallowed and bloated from luxurious excesses; and while she affected the most engaging manners her demeanor was evidently studied and constrained, and every artifice was invoked to remedy her natural defects. Her fingers and ears and breast glittered with sparkling ornaments. She was exceedingly bold, and the blush of modesty was altogether a stranger to her cheeks. Her dress was of the most gorgeous colors, and she was ever on the alert to detect the least glance of admiration; indeed, she would often stop to admire her own shadow.

With characteristic pertness she hastened in advance of the quiet, majestic step of her companion, and addressing Hercules with a bland but affected smile, announced to him that she was aware of the character of his meditations, and if he would accept the offerings of her friendship she would conduct him along the most flowery paths of happiness and ease, where every delight should court his enjoyment, and not a thorn of pain or thistle of sorrow should ever pierce his feet. Free from the harsh and annoying concerns of life the pleasures of luxury should be his only employment. Upon this flattering and seductive announcement, Hercules demanded her name. "My friends," said she, "call me Happiness; but my enemies brand me with the nick-name, Sensuality."

By this time the other lady had arrived, and, accosting Hercules, said that she, too, had come to offer the consolation of her friendship in the matter about which he seemed to be disturbed; that she was not a stranger to his eminent parentage, and had remarked the goodness and amiability

of his disposition from his early childhood, and in view of which she entertained the most lively hopes that if he would follow her lead he would achieve glory for himself and be an honor to his chaperon; but that she did not intend to allure him by specious promises of pleasure, but would represent things as they existed in reality, and disclose to him the will of heaven concerning them. "Know then, young man," said she, "that the allwise rulers of the universe have decreed that nothing great, nothing excellent can be achieved without care and labor; that no good, no happiness, can be attained on any other terms. If, therefore, you would obtain the favor of the gods, adore them. If you desire the love of your friends, be worthy of it. If you wish to be honored by your fellow-citizens, serve them. If you wish to enjoy the fruits of the earth, cultivate it. Thus alone, O Hercules, mayest those attain that felicity with which I am empowered to reward those who yield to my direction, and who not only enjoy the richest blessings of earth, but when the fatal hour arrives, my votaries sink not like others into inglorious oblivion, but live forever in the favor of the gods and the grateful remembrance of mankind."

The lady in white beautifully represents the spirit of maternal influence — the virtuous inspirations of a noble mother or devoted wife, and as the life of Hercules evinced the wisdom of a choice which enabled him, under the sternest decrees of fate, to glorify the teachings of virtue, so the life of Judge Sexton verifies the power of those hallowed admonitions which he received from his pious and devoted mother.

One of the most important cases argued by Judge Sexton in the Supreme Court is that of *Snider v. The International and Great Northern Railroad Company*. The question in this case arose upon the interpretation of the act of the 29th of November, 1871, declaring that the withdrawal of a certificate and field notes from the land office by the owner or his authority, "will render the location and survey null and void." In arguing the meaning of the statute, he said: —

"Those words speak for themselves. True it is that the

language of the article is 'the withdrawal of such certificate,' and the words 'by the owner or his authority' are not there. But what is the ordinary meaning of the word 'withdrawal?' 'To take back,' 'to recall.' (Webster's Dictionary.) Who can take back or recall, except the one who originally deposited the thing to be taken back or recalled? The Legislature must be understood to have used words in their usual and ordinary signification. If some man, having no right to, or claim on a piece of property in the land office, or elsewhere, takes it out of the place where it has been deposited, that is not a withdrawal. It may be a theft; it may be a trespass; it certainly is not a withdrawal. And, for the quite conclusive reason that having never put it there, he could not withdraw it. The owner of the certificate could control it. Having placed it there, in the first instance, he could let it remain, or he could recall it, or withdraw it and then, he became subject to the consequences of his own act. Article 7097 of Paschal's Digest provides, that where the field notes of surveys made by virtue of certificates referred to in the preceding section (Art. 7096) 'have been returned to the general land office, and the certificate by virtue of which the survey was made is not on file in the general land office, nor has been withdrawn for location of unlocated balance as is provided in the first section of this act, such certificate shall be returned to and filed in the general land office,' etc. Appellant's whole case consists in a literal construction of the words 'and the certificate by virtue of which the survey was made is not on file in the general land office.' And, in order to give those words the effect contended for by appellant, all the balance of the act must be entirely stricken out, and they must be made effectual, if they can be, by their own inherent force and energy. I do not think this court will undertake such an enterprise. What those words mean is rendered apparent by what immediately follows them, viz.: 'nor has been withdrawn for location,' etc. The balance of the sentence and of the article (7097), in which these words occur, shows clearly that the legislative mind was still contemplating an act by the owner of the certificate (*i.e.*

a recalling by one who had placed the certificate in the land office and had the right and power to recall, or withdraw it), and was, for satisfactory reasons of public policy, providing certain legal consequences to that act. The use of the word 'return' in the same connection strengthens the view I am endeavoring to present. It is possible that a party who had illegally and improperly taken a piece of property from the owner thereof, or from the place where it was by law deposited, might return it. But such conduct is not usual and we can not suppose the Legislature was providing for such an unusual and improbable contingency. The Legislature was evidently contemplating a 'return' by the party who had withdrawn the certificate and it was for him and his conduct that it was then providing. Article 7098 uses the word 'withdrawn' and 'withdrawal' altogether when referring to field notes and surveys.

"Not only is the meaning of the Legislature clear, as I think, by the words it has used, but if resort is had to construction it seems impossible to make the act, under consideration, mean what is contended for by appellant. And this, for the reason that the construction placed upon the act of 29th of November, 1871, by appellant renders it absurd and unjust. Is it reasonable or just that one man should suffer for the act of another which he did not know of and could not prevent? And is not that the direct and necessary result of the construction of the act in question which is insisted upon by appellant to be correct? It seems so to me. Appellant says the McNutt certificate and field notes were 'out of file' — 'not on file' — and therefore 'the location and survey thereunder were forfeited, and I (appellant) have located the land.' We ask who took them out? We did not. Appellant replies, 'I do not know or care who took them out; they are out, and I have taken your land.' Is this reason? Is this justice? Is it what the law means? Did the Legislature intend to produce a result which so shocks the moral sense and common intelligence of mankind?

"Elementary authors, among the different rules for the construction of statutes, say that it is proper to consider

‘the old law, the mischief and the remedy.’ Let us briefly apply these tests to the statute under discussion. It was a fact so notorious as to have become a matter of public legislative history, and therefore I am justified in referring to it, if, indeed, this court will not take judicial notice of it, that the owner of a certificate would locate it in one place, have a survey made under it, and return the field notes to the general land office, then withdraw it (or, as was sometimes said, float it) and locate it in another place, have another survey made and again return the field notes, and so on, until, in some instances, three or four or perhaps more different surveys or tracts of land were held by the same certificate. The party making these different locations and surveys would hold them until an opportunity was afforded him to sell upon speculation to some one who had a certificate, when he would again float his and make another location, his original location and survey meanwhile remaining in the land office, and when he had speculated as much as he desired, or was prudent, he would return his certificate and obtain a patent on his original field notes. Or perhaps the process would be reversed, and the party floating his certificate from place to place would procure certificates by purchase or other means not necessary to be specified, and apply them to the choice locations he had secured by floating his original certificate. There was a well known phrase, borrowed from the nomenclature of stock raisers, often used in conversation to describe the proceeding to which I have just referred, but judicial propriety forbids that I should use it here, though it is very expressive. I doubt not your Honors have heard it and readily understand my allusion. This was doubtless the mischief which the Legislature was trying to prevent, and which the old law was not sufficiently specific to prevent. The remedy clearly was, to provide that the owners of certificates who had withdrawn them from the general land office for the purpose of speculating improperly upon the public domain, or upon the ignorance or necessities of others, should return them and procure patents upon their original locations. Is not

the conclusion irresistible that this is just what the Legislature was considering and what it intended to do, and did? The case of a certificate and field notes already in the general land office and never withdrawn by the owner, but simply on deposit and awaiting patent, was not thought of, much less in any way provided for or effected by the Legislature which passed the act of 29th of November, 1871.

“If it be said that the object of the Legislature was more or different than I have stated, in this, that it was to ascertain the quantity of unappropriated public domain, and to induce diligence upon the part of the owners of certificates, still, I answer, the idea is clear and conspicuous that the act from the beginning to end contemplated and was framed with reference to withdrawal by the owner. It nowhere appears that it was intended by the Legislature to punish the owner of a certificate and survey for an act done by another. It has no word of reference to the man who has complied with the law; to the man whose location and survey had been made, whose field notes and certificate had been returned and were on file in the land office. To him it said, by saying nothing, that you have done your duty — you have only to get your patent. But to the man who had ‘withdrawn’ his certificate or field notes, it said, you must return it, or you will be held to have abandoned your location, and we will let another take it.

“Says Professor Lieber, an author whose recent work on Political and Legal Hermeneutics can not fail to commend itself to those of the legal profession who read it, ‘there can be no sound interpretation without good faith and common sense.’ (p. 109.) Again on the same page he says, ‘that which is probable, fair and customary, is preferable to the improbable, unfair and unusual.’ In reference to construction, says the same author (p. 136), ‘no text imposing obligations is understood to demand impossible things.’ (Would it not be impossible for the owner of a certificate to return it to the land office when he had not withdrawn it therefrom, did not know of its absence and did not know where it was?) Again, on same page, ‘the

effects' which would result from one or the other construction may guide us in deciding which construction we ought to adopt.' In the preceding brief your Honors will find several references to this author and to Dwarris on Statutes, all of which are earnestly commended to the consideration of the court. The interpretation and construction of this statute of 29th of November, 1871, is an important feature in this case, and this is my apology for occupying so much time with it.

"I submit, further, that the construction of this statute, contended for by appellant, would deprive the defendants of their property, the land appropriated by the McNutt certificate, survey and field notes, without due course of law. The owners of the McNutt certificate have complied with the law. Neither McNutt, or those holding under him, have done anything to forfeit his or their rights. Is a forfeiture of their estate to be declared by legislative enactment on account of the tort or malfeasance of another, or on account of the negligence or carelessness of a public officer (the commissioner of the general land office or his clerks), in permitting a paper to be lost in his office or taken therefrom, without any agency of theirs? Such a result was prohibited by the Constitution of Texas, in force when the act of 29th of November, 1871, was passed, and by every constitution Texas has ever had. Will this court give to an act of the Legislature a construction which must produce such a result? I think not."

This view of the question was affirmed by the Supreme Court in *Snider v. Methvin*, 60 Texas, 487.

JOHN H. REAGAN.

The distinguished subject of this memoir was born in Sevier County, Tennessee, on the 8th of October, 1818. His education was confined to the advantages afforded by the common schools and an academic course. He immigrated to the Republic of Texas in 1839, and settled east of the Brazos. His first occupation was that of a surveyor of lands, which he pursued until the year 1843. Soon after his arrival in Texas, in 1839, he was engaged in the battles which occurred that year with the Cherokee Indians, and was with General Tarrant in his expedition to the Cross Timbers in 1843. While engaged in the occupation of a surveyor he studied law and, having obtained his licensé in 1844, he began the practice of his profession at Old Fort Houston, now Palestine, where he still resides.

In 1847 he was elected to the Legislature, and acquired reputation by his energetic advocacy of measures affecting the general interest of the State. In 1852 he was elected district judge and was re-elected to that office in 1856. In 1857 he was elected to the United States Congress from the Eastern District and was re-elected by a large majority in 1859.

Judge Reagan, until 1861, had always been a Democrat of conservative views, but the triumph of sectionalism in the election of Mr. Lincoln upon a platform avowedly hostile to Southern interests caused him to advocate the secession of Texas from the Union and the resumption of her sovereignty as an Independent Republic, and in January, 1861, while still a member of Congress, he was elected a delegate to the State Convention at Austin. He immediately left Washington and took his seat in that body. By request of the members he addressed the convention, and in

an able and pathetic speech presented to it his views upon the great question which was then agitating the country and gave the reasons by which he was actuated in advising that Texas should resume her sovereignty. When the secession of the State was accomplished he was elected a deputy to the Provisional Congress of the Southern States, which was about to convene at Montgomery, and participated actively in framing the Constitution and organizing the Provisional Government of the Confederate States.

Judge Reagan is a man of great tenacity of purpose and firmness of character, and his business capacity is equaled only by the soundness of judgment which directs it. He is a man of intense convictions and unswerving in the pursuit of noble ends by noble means. Mr. Davis had observed these traits of his character while Judge Reagan was a member of Congress, and when he entered upon the Presidency of the new Confederation he immediately selected him as a member of his Cabinet. As Postmaster-General of the Confederate States his services were universally recognized as efficient in the highest degree. Upon him devolved the task of organizing and putting in motion the postal service of a new nationality containing millions of people, and to maintain it amid the march and counter-march of armies, the transportation of hundreds of thousands of troops, the shocks of battle, in the face of invading hosts, in the van of retreating armies, to re-establish captured and desolate lines, and keep open communication with all parts of the Confederacy. How well and thoroughly he accomplished this task belongs to the history of the world, and is known among all civilized men.

He was faithful and true to the Confederacy. He had espoused its cause with all the ardor and sincerity of his nature, and when he accepted a place in the Cabinet of Mr. Davis it was the seal of his unswerving fidelity and devotion. He was true to the Confederate President in all the vicissitudes of his fortune, and was with him at the time of his capture.

He was for some time held a prisoner at Fort Warren, in Boston harbor, and while there counseled the people of

Texas to confer the right of suffrage upon the most intelligent portion of the negroes, which was at that time distasteful to them, and his "Fort Warren letter," as it was called, invoked upon him a torrent of abuse and contumely. They would, however, have gained nothing by the adoption of his views, nor did they lose anything by rejecting them; for, as subsequent events show, the dominant party determined to stop short of nothing but universal suffrage, which, though intended as a policy of revenge, was the most fortunate measure for the South and the most merciful of all Republican acts, since it has given to the South the power of asserting its rights in the National Congress, overthrew the party which forced it upon the Southern people, and has given a Democratic President to the country in 1885.

On being released from prison, Judge Reagan returned to his impoverished home in Texas, and with a brave heart set about providing a support for his family. Having been re-enfranchised in 1872 he was elected in 1875 to the convention assembled for the purpose of conforming the Constitution of Texas, which had been forced upon it by military authority in 1868, to the rights and dignity of the State and the wants of the people. In this assembly he was an able advocate of those fundamental principles and guarantees upon which the future welfare of the State depended, and was the author of the provisions protecting actual citizens and those seeking homes in it from fraudulent claims and forged titles.

In 1874 he was elected from his old district to a seat in the Forty-fourth Congress, and was re-elected to the Forty-fifth, Forty-sixth, Forty-seventh and Forty-eighth, and has been re-elected to the Forty-ninth Congress; and during all this time he has devoted his energies as faithfully to the service of his constituency, to the interest of the Union and to the honor of its flag, as he did to the cause of the Confederacy.

His career in Congress has been particularly distinguished for the ability and constancy with which he has advocated the protection and promotion of the industrial and commercial interest of the country. His Inter-State Commerce

bill, which has been for a long time pending before Congress, is more largely promotive of the interest of the people than all the revenue bills, bills for internal improvements and measures of finance that have ever been invented, and is one of the most important measures ever brought before Congress. For the passage of this bill he has made a faithful and able fight. He has had to contend against the great railroad and steamship companies, all the monopolies and nearly every great monied corporation in the country. But he is still persistent and strenuous in his efforts to accomplish this great public good, and is still hopeful of success through the power of the people; and if he is successful in procuring his bill to be enacted into a law of the land, it will cause him to be designated as a benefactor of his country, and his name to be handed down through the corridors of time, as one whose foresight, ability and perseverance achieved a triumph for the people over the oppressive aggregations of wealth and the monopolies of commerce that will ripen its beneficent fruits for both the present and the coming generations of men.

Judge Reagan is an eminent lawyer and an able practitioner. His calm and penetrating perception, correct judgment and sound "common sense" enable him to grasp and digest a question in all its practical as well as philosophical bearings, and he is an excellent counselor.

His plain, frank and self-possessed manners impress his honesty and uprightness of purpose upon all who come in contact with him, and his well known character engages universal popularity and esteem — the merited rewards of an able lawyer, a faithful officer, a true patriot and a good man.

THOMAS NEVILLE WAUL.

The distinguished subject of this sketch is a native of South Carolina, and was born near Statesburg on the 5th day of January, 1815. His paternal ancestors immigrated to Virginia at an early period, and their descendants settled in New Jersey and the Carolinas. Thomas was the only child of his parents, and is the only remaining descendant of the Carolina branch of the family. He lost his mother during his infancy, but his early scholastic training was ample, and at the age of fifteen years he entered the University of South Carolina, but was compelled to abandon his collegiate studies before graduation, in consequence of the death of his father and his limited means. His health, too, at this time was feeble, but being thrown upon his own resources he promptly buckled on his armor and boldly entered the battle of life.

In recognition of the kindness of his stepmother he generously presented her with his interest in the small estate left by his father, and having obtained recommendations and testimonials of his character and scholarship, he set out in 1832 on horseback to seek his fortune and a home in the West. Arriving at Florence, Alabama, fatigue and feebleness of health caused him to halt, and he determined to seek employment at that place. His intelligence and cultivated manners made a favorable impression upon the people, and at the age of seventeen years he was elected principal of the Florence Male Academy. But he had at an early age fixed his heart on the profession of law, and, having taught one session, he resigned and received the highest testimonials from the trustees of the school. With these as his introduction, he proceeded to Vicksburg, Mississippi, where he became acquainted with the afterwards



J. N. Waul

famous Sergeant S. Prentiss, and a mutual esteem was the natural result of their acquaintance. Mr. Prentiss soon discovered the genius and budding talents of the young visitor and admitted him as a student into his office. Here, in the office of Messrs. Prentiss & Guion, in the glare and glitter of prominent genius and legal talent, he was prepared for the bar and inspired with sentiments of the highest aspiration and the loftiest aims. Having availed himself to the utmost of this excellent and brilliant training, he possessed the warmest friendship of Mr. Prentiss as long as that distinguished man lived.

In 1835 he was admitted to the bar by the Supreme Court of Mississippi, and was soon afterwards appointed district attorney for the river district, including the counties lying along the Mississippi and the cities of Vicksburg and Natchez, which at that time contained the most brilliant array of legal talent in the Southwest. During this period he resided a short time in Yazoo City, and, after the expiration of his term of office, removed to Grenada, where he enjoyed a large professional patronage, and in a few years was enabled to abandon the general practice and confine himself to business in the Federal courts and the high courts of the State.

In 1850, having acquired an ample fortune, he removed to Texas and established an elegant and hospitable home on the Gaudaloupe, in Gonzales County; but his interests in Mississippi requiring his attention, he afterwards located in New Orleans, where he resumed and practiced his profession with great success. While he was never a candidate for a political office during his long residence in Mississippi and Louisiana, he was always a man of strong political sentiments and firm opinions. He was a great admirer of Mr. Calhoun, a thorough Democrat of the State's Rights school, a strict constructionist of the Constitution, and took an active part in public debates when the principles of his party were assailed. The independence with which he always maintained his own views precluded the imputation of ambitious designs, while the earnestness and eloquence with which he advocated the principles of the Democratic

party gave him a commanding popular influence. The rapid and aggressive progress of the Know-Nothings summoned him to the hustings, and his efficient opposition to the principles of that organization was recognized by the Democratic party in selecting him as its candidate for Congress in 1859. In this canvass he gained additional reputation and popularity by his eloquence, talents and force of character; and notwithstanding that he was defeated by the independent candidate, Hon. A. J. Hamilton, his party valued the services of its champion, and he was made an elector for the State at large on the Breckinridge ticket in 1860. In this canvass he predicted the coming storm and advised a united South and unity of action as the only means of averting civil war. His able appeals and their corollaries presented a conscientious acceptance of the situation to those who opposed secession and cemented the subsequent views of the people.

When the State of Texas seceded from the Union in 1861, he was chosen a member of the Provisional Congress which convened at Montgomery, in which he urged the most prompt and comprehensive preparation for the struggle as the most effectual means of securing peace either immediately or prospectively, by treaty or by war. The latter having become inevitable before the expiration of his term, he declined election to the Congress of the Confederate States and determined to devote his services to the field. Returning to Texas, he raised and organized two thousand men into the command known as "Waul's Legion," of which he was elected commander. With this he hastened to join the Confederate troops concentrating for an attack upon the Federals at Corinth, but on reaching Holly Springs, he learned of the defeat of the army under Generals Price and Van Dorn. His knowledge of the topography of Mississippi enabled him to render most efficient service in covering the retreat of General Pemberton and in the subsequent campaign and siege of Vicksburg. The details of his brilliant military career belong to the history of the country. He and his "Legion" became famous, first for his gallant defense of the Yazoo Pass, which for

some time saved Vicksburg and the Mississippi River to the Confederacy, and then in the heroic defense of that city. After the surrender of Vicksburg he was promoted to the rank of brigadier-general for his gallant services, and ordered to Texas to recruit his Legion to the complement of a brigade. While thus engaged, the expedition of General Banks threatened an invasion of the State. General E. Kirby Smith offered him the command of one of his best brigades, which he accepted, and led his command with distinguished gallantry and generalship in the battles of Mansfield and Pleasant Hill. After General Walker was wounded he was placed in command of the division, and bore a prominent part in the battle of Saline, or Jenkins' Ferry, in which he was wounded, and in which the Federals were driven from the field, but with heavy loss to the Texas troops.

At the close of the war General Waul returned to his home on the Gaudaloupe, and in 1865 was elected against his wishes a member of the reconstruction convention. His eminent ability and influence could again be of great value to his fellow-citizens. His country demanded his services, and to whatever that required his patriotism yielded obedience. He accepted the position and employed his best efforts to secure the adoption of a constitution which would remove all grounds of sectional animosity and at the same time preserve a recognition of the rights of the people and of the State of Texas. He never viewed the overpowering of the South as a humiliation or felt that submission to the result of the war was a disgrace, and in a spirit of noble manhood and a high sense of honor he demanded a guarantee of the inalienable and just rights of a people vanquished in honorable and justifiable war as the only means of establishing permanent peace and national prosperity. These sentiments he advocated and for these principles he contended with a serene boldness and conscientious earnestness, with a firm and unconquerable spirit that excited the admiration of those who coincided in his views and the respect of those who opposed his efforts.

Having lost the greater portion of his property by the

result of the war, he found it necessary to return to the practice of the law which he had abandoned some time before the beginning of the strife, and promptly yielding to the exigencies of his condition, he removed to Galveston, where his talents and integrity soon gained him a large practice and placed him in the front rank of the lawyers of the State. He has always taken a deep interest in promoting and elevating his profession, and was for several years President of the Texas Bar Association.

His wide genius and comprehensive views have led him to devote his practice chiefly to commercial matters and cases in admiralty, and to suits in the Federal courts arising out of large transactions and involving important principles of Federal jurisprudence. Yet he is equally skilled in all the branches of law and thoroughly conversant with every feature of legal science. His intellectual qualities, naturally of a high order, have been assiduously cultivated to the highest standard of professional attainment. His intuitive perception, close analysis and accurate judgment promptly seize upon and resolve the gist of the most abstruse legal proposition, while his ready discrimination between the specious and the real, between truth and error, impress his positions with a certainty which it is equally fatal for opposition either to assail or avoid.

He early cultivated the habit of preparing his cases with unsparing pains and thorough research, and his apt powers of analogy and knowledge of precedent afford him abundant resources for parity of reasoning and happy illustration, and he is rarely at a loss for imagery and example. Yet he is a man of great intellectual independence, and however well he may be acquainted with the opinions of others, he promptly subjects the solution of every question to the color of his own views and the dictates of his own judgment.

While he has made himself a profound lawyer his thirst for knowledge and his love of literature have led him through the fields of general science and his taste has found congenial food in every branch of polite learning; and this the brilliancy of his intellect and the versatility of his

genius have enabled him to accomplish without apparent detracting from his professional ability. He is particularly fond of botany, and had he devoted his talents to that department of science he would no doubt have roamed as luminously through the blooming parterres of nature as he does through the rugged cope of law and equity.

His dauntless moral and physical courage enabled him to surmount every obstacle, to withstand every temptation and to pursue the path of duty dictated by integrity with unswerving effort, and his success is the merited reward which virtue bestows upon talent and industry.

His personal characteristics present a clear, well defined, arching over and blending of virtues as polished as the chiseled structure of his intellectual and professional attainments. He is a man of amiable qualities and courteous manners. His magnanimity and love of justice subjects his conduct to the regimen of the Golden Rule, and these qualities are chastened and confirmed by the cardinal Christian virtues. He is a consistent member of the Baptist Church, and has planted a noble influence and example in the path of Christianity. He was married in 1835 to Miss Mary Simmons, a cultured and accomplished young lady of Georgia, a lady whose qualities were fashioned in the same mould with his own, whose graces adorn his elegant home and link the golden chain of domestic felicity.

The conduct of this noble lady during the war was illustrative of the truest type of Southern womanhood. Her career was indeed romantic and inspiring. When her husband entered the army she abandoned her elegant home with all its enchanting comforts and became a permanent attache of his command, both in camp and in the field. Her kindly hand was felt wherever there was need of sympathy, tenderness and care. She visited the sick and attended the wounded until her experience made her a most efficient member of the staff in organizing corps of nurses, and in preparing and regulating hospitals.

On two occasions she was present on the field of battle, and exposed to the danger of shot and shell. She was in Fort Pemberton, on the Yazoo, while it was being bom-

barded by the iron-clad fleet under General Ross and gallantly defended by her husband, and could only be induced to leave it at night upon his urgent solicitation, when she crossed the river in point blank range of the enemy's cannon. While General Waul was in the thickest of the fight at the battle of Mansfield, one of his orderlies dashed up and informed him that Mrs. Waul was about one hundred yards in the rear. The General, it may be supposed, had no time then to realize the mingled impulses of surprise, admiration and alarm which must have flashed across his mind; but he commanded the orderly to return and tell her she must leave the field immediately and return to Mansfield, that he did not wish at that time to be troubled with the care of women. An hour later, after the enemy had been driven back, the orderly returned with a large basket on his arm, and stated that when he delivered the message the lady said: "Well, I knew the General had had no breakfast, that he would have a hard day's work, and I simply wished to bring him a luncheon." The more than timely refreshments were then spread before the hungry staff, and it required no wine or strong drink to inspire the hearty toast and ardent wishes for the health of the noble lady.

After the battle she called on General Taylor, the commander-in-chief, at his quarters, and was met by his adjutant, who in the most courteous manner offered to prefer her wishes to the General; but, politely declining his services, she desired a personal interview. When General Taylor appeared, as afterwards related by him, she said: "General, I know your time is precious, and I wish to avoid the complication and delay of your regular forms. We have a great many soldiers badly wounded, many dead and many dying. No preparations have been made for them, and they need food, medicine and clothing." The General with his characteristic promptness, turned to his adjutant and said: "Major Surget, issue an order to all quartermasters and commissaries to deliver to Mrs. Waul all supplies of every kind captured from the enemy which she may order for the use of the hospital;" and the hospi-

tal at Mansfield was one of the best furnished in the army of the Confederacy.

As the author has had occasion to remark in another work, history will ever accord the highest meed of praise to the noble women of the South. At the first sounding of the tocsin of war they buckled on the armor of their husbands, fathers, brothers and sons, and bade them go with all the exulting pride and patriotic spirit of the dames of Sparta. And amid all the vicissitudes of war, and all the trials and sufferings that fell to their lot, they maintained the same spirit of defiance, the same calm, dignified demeanor, an abiding faith and unswerving constancy unequaled by the maids and matrons of Rome in the palmiest days of heroism. If they did not lop off the head of a Holofernes, sink ships of war, or scale the frowning ramparts of an Orleans, they inspired the soldiers of the Confederacy with that valor which gained the admiration of the world. No Susanna, Artemisia, or Maid of Orleans ever displayed a higher degree of genuine womanly fidelity and heroism.

Nor did their devotion wane when the smoke of battle cleared away and the Southern flag lay trailing in the dust; but with the same lofty spirit and virtuous pride they held the rod of scorn over those of their countrymen who, for one cause or another, would have dragged them down to the level of that state of society which a revengeful policy sought to establish.

The mothers of the South have indeed had a hard time; but while the years have rolled away, every month and day have left an effacing mark upon the sources of their troubles, and the great clock of destiny has summoned the daughters of the land to a sphere of happiness and usefulness undreamed of in older days.

All honor forever to the noble women of the South. The seal of their patriotism is stamped with more than mortal superscription. Their virtues will forever embellish the pages of history, and hang upon the walls of time like "apples of gold in pictures of silver."

W. P. BALLINGER.

William Pitt Ballinger was born in Barboursville, Knox County, Kentucky, on the 25th of September, 1875. His grandfather, Colonel Richard Ballinger, was a native of Virginia, and an aid-de-camp to General St. Clair at the time of the defeat of that general by the Indians. He removed to Kentucky in the early period of its settlement, and was the first clerk of Knox County, was afterwards a member of the State Senate, and lived to a great age, highly respected for his intelligence and personal qualities. His father, James Franklin Ballinger, was a native of Barboursville, and spent the greater part of his life as clerk of the courts in Knox County. He was a soldier of the War of 1812, and at the age of seventeen years was taken prisoner at Dudley's defeat, and compelled to run the gauntlet for his life. In 1837 he was a member of the Kentucky Legislature, and in 1840 was an elector on the Whig ticket. He removed to Texas in 1868, and died at Houston in 1875, in the eighty-second year of his age, and in the conscientious serenity of a beneficent and useful life.

The early education of William Pitt Ballinger, was obtained in the schools of his native town, and, having spent two years at St. Mary's College, near Lebanon, Kentucky, he received a thorough training in the office of his father, and at an early age became familiar with the business of the courts, which laid the foundation of his great success at the bar. In 1843, his health requiring a milder climate, he accepted an invitation from his uncle, Judge James Love, of Galveston, to remove to that place, and immediately began the study of law in his office with a vigor of determination which predestined the attainment of professional eminence.

When the Mexican War began he joined a volunteer com-

pany as a private soldier, but was soon afterwards elected first lieutenant of his company, and was appointed adjutant of Colonel Albert Sydney Johnston's Texas regiment, with which he served at the storming of Monterey. He returned to Galveston in the fall of 1846, and in the spring of 1847 obtained his license and began the practice of his profession. He was soon afterwards admitted as a partner in the firm of Jones & Butler, who did the largest practice at the Galveston bar, and was thus engaged at the start in the most important cases in the courts. In 1850, upon the recommendation of the judges of the Supreme Court and leading members of the Legislature, he was appointed United States attorney for the District of Texas, and filled that office with efficiency and ability.

In 1859, he was employed as leading counsel in the great cases involving the title to the wharf property and water front of the city of Galveston, 23 Texas, 349. The Congress of the Texas Republic had, in 1836, granted to Michael B. Menard, the east end of Galveston Island for the purpose of building a city, and the question in dispute was whether or not this grant included the adjacent flats which were periodically submerged, and Mr. Ballinger, in contending for this comprehension of the grant, enters into an elaborate discussion of both the common and civil-law definitions of what constitutes a sea shore, and the requisites of a dedication to public uses.

In 1871 he declined a position upon the Supreme Bench, tendered him by Governor E. J. Davis, through his repugnance to any connection with his administration. He was again appointed an associate justice, in 1874, by Governor Coke, but was induced, by the demands of his private affairs, to resign on the day of his confirmation.

In 1875, he was elected a member of the convention which framed the present Constitution of Texas, and was chairman of the committee on the executive department, and a member of the judiciary committee. He differed widely in his views from a majority of the convention. He was opposed to an elective judiciary, which he feared would drag the ermine through the mire of political strife, and

prove fatal to the purity and efficiency of the bench, and especially if attended with short terms and constant rotation in office. He favored salaries adequate to obtain competent public service, and protested against the curtailment of executive functions necessary to an efficient administration of the government; and, failing to impress these views, he opposed the adoption of the Constitution and voted against it at the polls.

In 1877 he was recommended by the Governor of Texas and all the judges of the high courts, regardless of political views, for the position on the bench of the Supreme Court of the United States, made vacant by the resignation of Judge Davis, and the Texas delegation in Congress urged President Hays to appoint him to that place; but partisan and sectional spirit reigned supreme at that time in Washington and dictated an opposition which could spring only from that origin. In 1879 Governor Roberts tendered him the appointment as one of the members of the Commission of Appeals, but he declined the office, and has steadily cherished a devotion and application to the duties of his profession, which no allurements of office or public honors could supplant or abate.

Judge Ballinger was a Whig as long as that party maintained a distinct organization, and still adheres to the main features of its political faith. He was not a sympathizer with the extreme doctrines of the State's rights school, and did not favor the theory and principle of secession. He warmly opposed it as an unwise and fatal measure, but when it became an accomplished fact and he saw no other alternative but success or subjugation for the South, he repelled the idea of a union by force, and gave his heart and soul to the success of the Confederacy, trusting that a reunion might eventually be accomplished by choice and a returning sense of the folly of disunion. He was one of the committee sent by the people of Galveston to Richmond to procure cannon for the defense of the city, and while on this mission he was appointed Confederate States' receiver, and performed the duties of that office during the continuance of the war. After the capitulation of the

army of Northern Virginia he was sent by Governor Murray as the representative of the civil authority, in company with Colonel Ashbell Smith, on the part of the military, to New Orleans to negotiate for the surrender of the State, and if possible prevent its military occupation. On returning to Galveston he resumed the practice of his profession, and, while voting since that time with the Democratic party, he is still independent in his views upon public questions and devoid of all political aspirations.

Beginning the practice of law with ample qualifications, and amid auspicious circumstances, Judge Ballinger has steadily advanced to the attainment of the highest professional eminence until he has no superior at the bar of Texas. With intellectual endowments of a high order, his mind has been trained to a capacity for keen perception and close analysis, his judgment tutored to accuracy and promptness, and his habits of application adapted to the sternest professional requirements. Indefatigable industry and the love of profound study respond to a strong will-power, and in the preparation of his cases no depth of principle or medley of circumstance can escape the edge of his comprehension, no obstacle baffle his determination to eliminate truth and justice, and no presentation allure him from the true elements of the issue.

Subsidiary to these qualities he possesses reasoning powers of a high order. His logic is strong, clear and closely knit, and appeals directly to reason rather than to sympathy or hallucination. While his language is chaste and correct he does not sacrifice clearness for embellishment, nor obscure the stamens of fact with the carollas of speech.

One of the best arguments in the Texas reports was made by Judge Ballinger in the case of *Webster v. Heard*, 32 Texas, 685. David Webster, who died in the city of Galveston in 1856, left a will in which he emancipated his servant woman, Betsy, and bequeathed to her his entire property, coupled with a trust lodged with a lady friend in Georgia. His heirs, residing in the State of New York, contested the validity of the will. Betsy and her trustee employed

Messrs. Porter and Ballinger to maintain her rights, and deeded them certain lots in Galveston as compensation for their services. They established the validity of the will in the face of strong popular prejudice, and afterwards conveyed the property to Heard. Betsy's rights were safe, and there the matter rested until the year 1866, when a scalawag Radical and grace-fallen preacher turned lawyer and instigated Betsy to bring suit for the recovery of the fees paid her attorneys, upon the ground that her disabilities were not removed and her freedom was not consummated until established by the result of the war.

Mr. Porter was then dead, and Judge Ballinger made the defense, and Chief Justice Morrill, in his opinion maintaining the validity of the conveyance, observed that "had the plaintiff, instead of expending what she has in this suit, appropriated the same in erecting a monument over the grave of the lamented Porter, and inscribed thereon what he did for her, in the furtherance of the kindness and benevolence of him whose name she assumes, she would thereby have given stronger proof than she now has that her gratitude has not yielded to her avarice."

In 1854 Judge Ballinger formed a copartnership with Thomas M. Jack, a man of strikingly similar personal qualities and professional traits, which inspired a congeniality and accord of co-operation between them, which conduced greatly to the success of the firm; and this association continued until the death of Col. Jack in 1880. He was also a brother-in-law of the latter, having married his sister, Miss Hattie P. Jack, of Brazoria County, in 1850. Immediately after his marriage he established the elegant residence in Galveston which is still his home—a seat of refinement and hospitality, which his accomplished lady adorns with every grace. He subsequently formed a copartnership with M. F. Mott, to which J. W. Terry has since been admitted; and this firm continues as one of the most able and successful in the State.

J. W. THROCKMORTON.

James W. Throckmorton, ex-Governor of Texas, was born in Sparta, Tennessee, on the 1st day of February, 1825. His father, Dr. William E. Throckmorton, was a physician of high standing and an excellent gentleman, and, having removed to Texas, was one of the first settlers of Collin County, where he died in 1843. The county of Throckmorton was named in commemoration of his virtues.

The subject of this sketch received a good common school education, and removed to Texas in 1841. In 1844 he began the study of medicine at Princeton, Kentucky, under the supervision of his uncle, Dr. James E. Throckmorton, and, having prepared himself for the medical profession, he returned to Texas and enjoyed for a number of years an extensive practice and the reputation of being a skillful physician. During the war with Mexico he volunteered his services to the army, and was made surgeon of Major Chevallie's Texas Rangers. He afterwards resumed his practice in Collin County, and pursued the duties of his profession with success until the year 1859, when, in consequence of failing health induced by the exposure and irregularity attending an extensive medical practice, he determined to follow the dictates of a natural taste and prepare himself for the bar, and, having thoroughly studied the general principles of law, he entered upon a successful legal career.

In 1851 he was elected a member of the Legislature, and was re-elected in 1853 and 1855. His efficiency as a legislator gained him popular favor and reputation, and in 1857 his services were further recognized in his election to the State Senate for a term of four years.

During his career in the Legislature he exerted himself particularly for the protection of the frontier settlements;

for procuring the adoption of measures for quieting land titles throughout the State, and especially those pertaining to Peter's Colony, which had been for some time unsettled and endangered; for the encouragement of the construction of railroads, and for the establishment and endowment of a munificent system of public schools. In his vigorous and able advocacy of these measures he stamped his genius and his name upon the cradle of the remarkable growth and prosperity of Texas, which has since that time spread her lap and her history before the world.

He had been reared a Whig in politics and was one of the electors of Texas on the Scott ticket in 1852, but on the dissolution of that party at the end of the campaign, spurning the doctrine of the Know-Nothings, which was then urged in opposition to Democracy, he affiliated with the party of Jefferson, which he believed to be the only palladium left of American liberty and of the principles upon which the American government was founded, and it was as a Democrat that he was elected to the Texas Legislature.

While he was conscious and sensitive of the wrongs, both actual and prospective, both perpetrated and threatened upon the Southern people by the advent of the Republican party to power in 1861, he was firmly opposed to secession as the proper mode and measure of the redress of Southern grievances, and, in this respect, harmonizing with General Houston and other eminent Texans, he was elected, while a Democratic member of the State Senate, as a Union man to the Secession Convention, in which he employed his best efforts to retain the allegiance of Texas to the Union and for the adoption of measures for maintaining its rights under the national flag. He was earnest and conscientious in his views. He was one of the seven members who voted against the ordinance of secession, and it is said that when he announced his vote some one hissed in the crowded galleries, upon which he rose to his feet and addressing the chair said: "Mr. President, the rabble may hiss while patriots tremble." Yet he announced that if the ordinance was adopted and ratified by the people, he would maintain the honor of his State and defend her action to the utmost of his ability. This attitude, if it did not attract respect to

his views, gained him great personal popularity. It acquired respect for his integrity and the purity of his motives, and he was applauded.

Texas withdrew from the Union with the voice of an overwhelming popular majority. Mr. Throckmorton had plighted his fidelity to her wishes, and, like Gen. Jubal B. Early, immediately buckled on his armor for her defense. He commanded a company in one of the first regiments organized in the State, and participated in the capture of Forts Washita and Arbuckle, on the Texas frontier, which was accomplished without bloodshed by the boldness and celerity of the expedition. He was afterwards captain of a company in the famous Sixth regiment of Texas cavalry, and rendered important service in the Missouri campaign. He led his company with distinguished gallantry in the Indian fight at Chustennallah and in the two day's battle at Elkhorn.

In the latter part of 1862 he was transferred to Corinth, Mississippi, where his command was reorganized, and, declining re-election to the captaincy in consequence of broken health, he returned to Texas, where he was for sometime disabled by disease for active duty. He afterwards performed efficient service in the campaign in Louisiana, and his health again failing, he retired once more, and was afterwards appointed by the Governor of Texas to the command of State troops, with the rank of brigadier-general, in which position he acquitted himself with honor and efficiency. He was soon afterwards elected to another term of four years in the State Senate, and as soon as the session of that body was over he resumed his command in the field.

During the last year of the war he was sent by Gen. E. Kirby Smith, the commander of the Trans-Mississippi Department, to treat with the Indian tribes inhabiting the Texas border, who had assumed a threatening attitude seriously endangering the safety of the frontier settlements. He succeeded in effecting the pacification of the Comanches, Arapahoes, Kiowas, Lipans, Cheyennes, and other fierce tribes, which required great tact and caution.

At the close of the war he returned to his home and resumed the practice of his profession. He quietly accepted the situation, and bent his energies towards the re-establishment of peace and order in conformity with the policy of the President. In 1866 he was elected a member of the reconstruction convention assembled under President Johnson's proclamation, and was chosen president of that body. In June, of the same year, he was elected Governor of Texas, under the new Constitution, by a large majority, and was inaugurated on the 8th of August. As Governor, his course was wise and conservative. His efforts were directed to the building up of the waste places scourged by the besom of civil war, and to the restoration of peace and friendship between the dissevered and discordant sections of the country. But his efforts were soon thwarted by the partisan and revengeful process of reconstruction adopted by the Federal Congress, which superseded the more pacific and just designs of the President. On the 9th of August, 1867, he was deposed by a missile containing three lines from an officer of the United States Army at New Orleans, who was temporarily in command of the military district of Louisiana and Texas.

On being thus forbidden to exercise the functions of his office, to which he had been peaceably elected by three-fourths of the Texan people, Gov. Throckmorton retired to his home in Collin County, where, disfranchised in common with thousands of his fellow-citizens, he remained in private life, watchful of the progress of events, yet unable to stay, even so much as by his vote, the tide of vengeance that rolled over his State.

In 1874, on the restoration of the ballot-box to the people, he was elected to a seat in the United States Congress by a large majority of the voters of his district, and was re-elected in 1876. At the expiration of his latter term, in 1879, he declined a re-election, and retired permanently to private life, in which, in spite of the pains of physical debility, he has enjoyed the reward of duty conscientiously performed, and the highest respect of his fellow-citizens.

Ex-Governor Throckmorton is a man of versatile genius and varied attainments. His reading has been extensive and his mind has been trained to those habits of calm reflection and steady contemplation which lead to a practical view of things. While he is naturally a man of quick impulses and vehement sensibilities his actions are controlled by a sound judgment and tempered by a serene discretion. He is a fluent and interesting speaker, enthusiastic in the advocacy of his views, and strikes straight at the crest of opposition. Yet he is plain and terse in his elocution and avoids all efforts at oration or display.

He is a man of strong and sincere attachments, and few men have more or warmer personal friends. He was married while he was a young physician, to Miss Annie Ratten, whose father emigrated at an early day from Illinois — a lady full worthy of all he could bestow.

JOHN HANCOCK.

The subject of this biography was born in Jackson County, Alabama, on the 24th day of October, 1824, whither his father, John Allen Hancock, a native of Virginia and a planter, had emigrated in 1819. Having devoted several years of his boyhood to the duties of the farm and acquired the habits of industry and economy inculcated by that most moral of all early training, he was afforded excellent educational advantages in the University of East Tennessee at Knoxville, in which he pursued a thorough course of studies and vigorously availed himself of his opportunities.

In 1843, he began the study of law under the supervision of Judge William Taul, an eminent lawyer of Winchester, and in 1846 was admitted to the bar in his native county. But possessed of an enterprise, an ambition alert for grandest possibilities, he determined to seek his fortune in Texas, and, having spent several months in prospecting for a suitable locality, he settled, in 1847, at Austin, where he formed a copartnership with Hon. A. J. Hamilton, and which has since been his constant residence. His close application and fidelity gained him friends and patronage. He soon acquired distinction and a large practice at the bar, and in 1851, when but twenty-six years of age, was elected judge of the Second Judicial District. His career upon the bench was characterized by honor and efficiency. His searching investigations gave soundness to his decisions. His promptness and dispatch, attended by a dignity and gravity of manner rarely found in one of his age, commanded confidence and respect, and he had the reputation of being a just, impartial, and able judge.

In 1855 he resigned the judgeship and formed a copart-

nership with Hon. Charles S. West, which continued until the latter was elected to the bench of the Supreme Court in 1883, and he then became associated in practice with his present partner, General N. G. Shelley. In conjunction with these gentlemen respectively he has been engaged while not on the bench or in Congress in nearly all the important land cases that have come before the courts in his section of the State. He is thoroughly familiar with the land laws of Texas, with the origin and nature of the various tenures by which the lands of the State are held, and his practice in these cases, especially, has been attended with remarkable success. While he is a man of fine natural abilities and general attainments, his success as a lawyer is largely due to a steady and almost unremitting attention to the business entrusted to him. It has been his rule to spend every business hour in either his office or the court-room, and it is said of him that during the thirty-eight years of his residence in Austin he has not spent that many hours on the streets undevoted to the requirements of his business, and that during all that time he has never failed to keep a professional, official or political engagement.

Some of the most important cases argued by Judge Hancock are *Carter v. Carter*, which is a leading case as to the admissibility of parol testimony to show that "a deed or bill of sale absolute on its face is a mortgage," and *Hancock v. McKinney*, 7 Texas, 384, which was a highly important case at the time, as it determined the consideration to be given by the Texas courts to conditional titles to land emanating from the preceding government, when the conditions had not been performed by the grantee, and to other questions relating to Mexican titles. The court rejected his views, but the Constitution of 1875 adopted, in its thirteenth article, the policy for which he contended. These cases were argued by him before his election to the bench.

While judge of the Second Judicial District he introduced several important rules, which greatly promoted the facility of the court in the dispatch of business, and which have been followed by his successors. One of which was

that practicing lawyers should not absent themselves from the court-room during the sitting of the court without notifying the sheriff of the place at which they could be found. Upon which a reasonable time would be given for sending for them; but no lawyer would be called as had been the custom and the cause of frequent and prolonged delays. The other rule was to order parties convicted and fined into the custody of the sheriff and to stand committed until the fine was paid. Previous to this parties convicted of misdemeanors, especially gamblers, would walk out of court in defiance of the law and regardless of the penalty imposed by the judge. In addition to this he informed the sheriff that his custody meant confinement in the county jail, and the beneficial effect of the rule was soon obvious upon all classes of society.

One of the most important and interesting questions argued by Judge Hancock after his return to the bar was the *habeas corpus* case of Peebles and others before the Supreme Court of Texas, in 1864. The history of this case is interesting as it presents a view of the conflict of law and public sentiment which often pervaded whole communities in those unsettled times. It is as follows: —

In 1863, J. D. Baldwin, a lawyer of Houston, wrote and published his views of secession in a pamphlet entitled, "Common Sense;" in which he arraigned its origin, its purpose and the manner in which it was accomplished, together with the manner in which the war was being conducted, and its ultimate consequences.

This work was printed by a German, named Zinke, with whom another German named Hilderbrand was supposed to be associated in the matter, and was covertly circulated. The work produced feelings of indignation and bitterness against the author and all who were supposed to be accomplices in its production and circulation. Baldwin was upon terms of social intimacy with Dr. R. R. Peebles, a wealthy planter on the Brazos River, and, before that time, a man highly respected in his community, though a staunch and avowed Union man, and frequently visited his residence. This caused the complicity of Peebles in the pub-

lication to be suspicioned, and the result of public sentiment was that a military order was issued for the arrest of Baldwin, Peebles, Zinke and Hilderbrand. The prisoners, after having been confined at respective places, were taken to San Antonio, where the public feeling was so exasperated against them that threats were made against their lives, and they would no doubt have suffered the utmost violence had it not been for the prompt and stern protection afforded them by Capt. Thomas E. Sneed, now a prominent lawyer of Austin, who was in command of the company detailed to guard them. This sentiment against them ran so high that the lawyers of San Antonio, Houston and other places, either through condemnation, or fear of public disapproval, declined to take any steps in behalf of the prisoners, notwithstanding that their friends, especially the family of Peebles, had made every effort and offer of inducement to procure counsel for them.

Under these circumstances Mrs. Peebles repaired to Austin and personally sought the services of Judge Hancock in an effort to save, as she supposed, the life of her husband, and without fee or reward he undertook their cause, and obtained a writ of *habeas corpus* from the Supreme Court, upon which the prisoners were tried and liberated. This result, effected in the midst of popular excitement, he achieved by a calm and deliberate discussion of the principles of constitutional law, the inalienable rights of the citizen, and the obligations of those clothed with judicial authority to conform their adjudications to the written law of the land and to the dictates of human rights. He boldly denounced the assumption of arbitrary power by the military authorities, and his victory was a vindication of the inalienable rights of an American citizen.

In politics, Judge Hancock has always been a Democrat of the Jacksonian school; he was opposed to the doctrines of nullification and secession, and in 1860 was elected to the Legislature on the Union ticket; but in 1861, declined to take the required oath to the Confederate government, and was deprived of his seat. During the war he maintained a neutral attitude, and divided his attention between the

practice of his profession and the supervision of his stock farm until he was threatened in 1864 with compulsory military service in a cause, the policy and character of which were against his convictions. He then repaired to Mexico, and having resided several months in that country, he made his way to the United States and remained at the North until the close of the war.

At the termination of hostilities, Judge Hancock returned to Texas and devoted his efforts to the amelioration of the condition of the people, and had his advice at that period been heeded, and the position he assumed been adopted, it would no doubt have greatly paralyzed the revengeful designs of the dominant party at the North, which were promoted by the reluctance of the Southern people to accept the full results of the issue. He was a member of the State Convention of 1866, and used his best efforts in the interest of conciliation and the immediate restoration of harmonious relations between the State and the Federal government as the only means of restoring the peace and prosperity of the people. Time, the great monitor of events, has vindicated his sagacity and established the correctness of his views, and he is considered a wise counselor both as a lawyer and statesman.

In 1870 he was tendered the nomination for Congress by a convention held at Seguin, but he declined in obedience to the demands of a large law practice, which he was not disposed to exchange for political honors; but in 1871 he yielded to the popular wishes and accepted the nomination as the Democratic candidate. He was easily elected, and served by re-election until 1877, when, having been defeated for renomination, he resumed the practice of law. His services in Congress had been faithful and eminent. His industrious habits, his business capacity, his practical genius, his kindness of heart, suavity of manners, and polished urbanity, crowned with conspicuous talents, gave him great influence, and he pursued with a steady purpose the accomplishment of that which he conceived to be the best interest of his constituency, his State and the country. So marked had been his efficiency, and so able and beneficent

his career, that his services were again demanded, and in 1882, he was elected to the Forty-eighth Congress. In 1884 he declined re-election, and after participating in the proceedings preliminary to the glorious inauguration of President Cleveland, he once more returned to the practice of his profession at Austin where he is now engaged in a large business.

The brilliant career of Judge Hancock is due to his force of character and the qualities already mentioned. He possesses no superior natural gifts as an orator and has never cultivated the artificial embellishments of speech or the mere flowers of oratory. He disdains all its "flower-decked plats and blooming parterres;" but, with his purpose well defined and his object constantly fixed in his view, his acute perception and cultivated judgment marshal every available point in the line of his argument, while a strong, powerful logic presents the merits of his case to the comprehension of common sense, and seizes upon conviction with the grasp of reason.

"The fluency of speech in many men and most women," says Jonathan Swift, "is owing to a scarcity of matter, and a scarcity of words; for whoever is master of language, and hath a mind full of ideas, will be apt in speaking to hesitate upon the choice of both; whereas fluent speakers often have but one set of ideas and one set of words to clothe them in; and those are always ready at the mouth; so people come faster out of the church when it is almost empty, than when there is a crowd at the door."

It is true that there are prominent exceptions to this rule as in the instances of Daniel Webster, Henry Clay and Sergeant S. Prentiss; but these exceptions have their origin in pre-eminent genius and, therefore, only affirm the aphorism.

Judge Hancock is a man of great energy and integrity of purpose, and views with impatience and intolerance every effort of evasion or undue advantage, and has no complacency with mere trifling with matters of importance. His last debate in the House of Representatives was upon the Fortification Bill, reported from his committee on the

1st of March, 1885. For some reason the calibers of the guns used in the United States navy were assized by odd numbers while those used in the army are varied by even numbers. Judge Hancock contended that the calibers of all should be uniform, so that the same ammunition could be used both on sea and on land, and be interchangeable in the event of a deficiency in either branch of the service, and so that army officers could understand the use of navy guns and naval officers the use of army ordnance without special training.

Some of the members during the debate on this bill in the committee of the whole availed themselves of their five minutes' time to discuss the question of silver coinage. To which Judge Hancock sternly objected, saying that it was not proposed by the bill to fabricate cannon and build fortifications out of silver.

In his speech on "counting the electoral votes," delivered in the House of Representatives on the 25th of January, 1877, he said:—

"Nothing is more hateful than a treacherous duplicity and a pretense of fairness merely delusory and intended to defraud. Everything which seems to be fair in this act of legislation is merely specious, insincere, and destructive.

"The board is to be at first composed of persons from all political parties, but it is not provided that it shall continue so. A vacancy occurring should be filled with one from the same political party as the last tenant, but it is not promised that it shall be, and those who are to elect can not be made to elect at all. A person interested as a candidate is to be allowed a hearing, but there is no promise that the hearing shall be full or fair. The returning officers are to hear testimony, but it is not provided that they shall do this publicly, or that there may be cross-examination or opportunity for rebuttal, or previous notice to any one in all the world. Their conclusions are to be considered *prima facie* correct, and may be gone behind in a formal proceeding to contest, but their findings as to the material facts are final and it can not be shown that they ought not to have been convinced. To sum all up in a word, they can truly

plead they had ample warrant in the letter of the law for doing all they have done and for abundant sharp practice besides. There is no limit to the amount of villainy which the law makes possible and permits.

“It has been said to be ‘the common method of all governments now received in the world to allow almost everything that tends to the corruption of manners, and then to restrain those corruptions; a work,’ it is added, ‘far beyond the power of the longest experience and greatest prudence.’ The act in question is a resort to one of those pernicious practices that tend to destroy public liberty. It proposes to legalize the ill-designs of inveterate knaves, never boldly attempted to be carried into effect by legislation in a republic until it is declining to its fall. It was most truly said by Fletcher that ‘a government is not only tyranny when tyrannically exercised, but also when there is no sufficient caution in the constitution that it may not be exercised tyrannically.’ ‘All governments,’ he said, ‘are tyrannical which have not in their construction a sufficient security against arbitrary power.’

“This act is tyrannical because it intrusts arbitrary power to five men or a less number, to be exercised without power of control or security against abuse in any quarter. It puts it in their power arbitrarily to annul the votes of whole parishes and cities, and so makes the right of suffrage of all the citizens depend upon their favor, their caprice, their interest, their irresponsible will. It is, therefore, not only violative of the rights of men; it not only makes the elective franchise and title to office, both of which are property, exist or disappear at the pleasure of four or five men having perpetual succession, but it makes the government of a State a tyranny, and not republican even in form.”

Perhaps the most important and effective speech made by Judge Hancock in Congress was that on Indian affairs delivered in the Forty-third Congress. By this speech he was enabled to change the policy of the government towards the Indians so far as to prohibit the issuing of rations to them for more than seven days at a time, and to cause the order that they would not be permitted to leave the reservations

unless accompanied by an officer of the United States. These regulations have prevented any raid from being made into Texas since that time, except from Mexico.

In 1876 he was assailed by Col. D. C. Giddings, the Democratic nominee for Congress, for having failed as a Southern Union Democrat to keep his promise to defend the Southern people against the violent attacks which were then being made by Radical partisans in Congress; and it was charged by Col. George Flournoy, an orator of Galveston, that he had been elected to Congress by the Texan Democracy for the sole purpose of mollifying the asperity of the North towards the people of the South, and that Galveston Democrats rejected him because he did not defend them when Blaine, Morton and others were heaping calumny and slander and falsehood upon them on the floor of Congress.

To these charges he published an elaborate reply and refutation which he concluded with the following observations: —

“ Why should I have been brought into this Congressional contest? My merits or demerits could neither add to nor take from those of Col. Jones or Col. Giddings, and whether I may have at all times done the wisest and best thing, or sometimes erred in judgment, as I often do, being but a frail, fallible mortal, almost every day looking back to find some error of yesterday I would correct, could in no way aid the people to a correct judgment in deciding between these aspirants. It was known I had been invited and gone to a remote part of the State, and taken no part in the contest, wished to take none further than vote for Col. Giddings, as I did, he being the nominee of the convention before which friends had placed my name, which in honor bound me, as well as duty to my friends, to abide by the action of the convention; they both claimed to be, and, I doubt not, have ever been, Democrats, and it was the people's right to choose between them. The action of the convention was only persuasive, not binding on them. On principle, as also by usage, they are, and should be, left free to vote as, in their judgment, will best subserve the

public welfare. For me to have sought to influence their selection, as between two Democrats, as to which of them should be my successor, would have been not free from criticism, besides both professed to be my warm personal and political friends. My friends and staunch supporters brought Colonel Giddings's name before the convention, supported and secured his nomination. The same men canvassed for him, and elected him, and he, till he reached Galveston, wherever he spoke of me, employed terms of eulogy and approval; but of those who conspired for my defeat, at all hazards, here he found himself among the chief priests, and then Judas said, 'Hail Master, and kissed him.' It seems, too, it had become popular with some of the would-be leaders in Galveston to abuse and say spiteful things of me. I have not been able to do a tithe of what I wished to advance the growth and prosperity of that city. The little I have done ought not to excite the enmity of that class of persons who are ever ready to become the enemy of those who render them favors and benefits, to show how independent they are. I remember, too, that among the most gloomy and foreboding features of our political history are those instances where artful, designing and ambitious demagogues conspired to move the public mind, by falsehood and misrepresentation, to passion and prejudice, till the people displaced, for a time, from their confidence, men deserving better of them than I have the ability to do. I have made no murmur of complaint and feel I ought to have been allowed to remain silent. If my defeat does not reflect the wish of the people of this district, in their own good time they will rebuke those who refused to reflect their views. I have not thrust myself upon the people, at any time, and have only held office and served them when they have manifested a desire to have me do so; but it seems determined, the people shall not manifest such wish if any manner of falsehood and misrepresentations can prevent.

“In Congress I have pursued that course, and observed, in my intercourse with others, that demeanor and deportment towards them which I believed best, to enable me to accom-

plish results deemed beneficial to those I had the honor to represent and all the people of Texas. I have not been able to accomplish all, or near as much as I could have wished, for their benefit. How far I have succeeded is shown by the record and known of many men. I have not paraded my humble achievements for the applause or the gratitude of the people, or for comparison with results effected by my colleagues; each has ever done, most certainly, all in his power; far be it from me to seek to deprive any of the merit of his conceptions, labor or influence. They are all able, efficient and faithful, and deserve, as they have received, well of their constituents.

“ Had the people who had honored me by electing me their representative, or of Texas or the South, been traduced or reviled, a failure to have properly repelled the slander or defended them, would have been a proper subject of criticism; but assaults made upon individuals should be considered and treated responsive to the purpose aimed to be accomplished by the assailant and the wrong or injustice to the individual assailed with reference to the facts and conditions of the subject-matter about the conduct of which the assault is made. The purpose was a common expedient resorted to by the demagogues, both North and South, as everywhere else, when occasion requires, to influence the passions and rekindle the prejudices of the people by revitalizing dead and past issues, as questions pending before and to be decided on by them in a pending political contest. The alleged cruel treatment and great suffering of prisoners, in consequence of the brutal and tyrannical conduct of the war under and by authority of Mr. Jefferson Davis, were the subjects aptly selected to be presented to, discussed before, and passed upon by the people in electing a President of the United States. Questions in no way connected with the different theories and measures of governmental policy maintained by the contending parties, or that could, in any degree, aid the people to decide on the respective merits of opposing candidates; but well calculated to effect the object desired of diverting the public mind from the real issues involved in the election, by reviving the preju-

dices and passions of the people and inducing them to again pass on the merits of secession and the war, rather than on the inefficiency, malpractices and corruptions of the administration and party in power. No doubt, had it been permitted, the party bringing forward these false and dead issues of secession and the war, would have kept up their discussion through the session of Congress and till the termination of the presidential contest. Considered in a political aspect, to have protracted discussion, the Democratic party could have gained nothing and might have lost much. Regarded in that light, enough had been said, and from the most effective quarter, when Mr. Cox and Mr. Kelley had spoken. How far Mr. Davis might be affected by the assault on him was proper to be determined by his personal friends and past political associates. They deemed it a duty to defend and vindicate his name, though his whole course had already become history, not to be changed by what politicians might think or say of him for partisan purposes. So far as secession and those engaged in the effort to accomplish it, or still keeping it up may have been brought in by implication, though I do not conceive that either was, even by implication, reached by the assault on Mr. Davis, I could not have been a proper advocate for either.

“It is well known I opposed secession. I did so upon my convictions that it was wrong—very wrong—would bring war, desolation and disaster upon the country, ruin and death to thousands, whatever the result, and success would eventuate in the overthrow of republican government and the establishment of a monarchy. Others favored the measure upon their convictions, equally sincere, proven by the highest testimony man could offer, the yielding up of life itself, that none of my apprehended evils would follow and that great ultimate good would be accomplished. A great problem in the science of human government was involved, upon which the wisest men might honestly differ. But on that account, if good and truly patriotic, they would retain no personal enmities, when the issue should be settled

and passed into history. When the war was over, I knew no feeling of enmity or unkindness towards any one on account of difference on the question of secession. My law partner, for over a score of years, and I returned to our old office near the same time, he from the Southern army, in which he had served as a soldier, and I from a section of country held by the Union army. We resumed our places at our accustomed desks and took up business where we left off without, I am sure, a recognizable change in our mutual feelings of friendship, respect and confidence, as they were before secession began. I so felt and acted towards all who disagreed with me on that momentous question. That feeling and conduct have been reciprocated by many zealous secessionists, who faithfully performed every duty devolved on them by the attempted revolution. But when the contest was ended, they returned to their allegiance and duty as became honest men and patriots, and I am proud to be able to claim many such among my most trusted friends and supporters. I have ever been as ready to trust and to serve them as if we had never differed. It has been my pleasure, as I believe it my duty, to do all in my power to alleviate the people in their distress, and to ameliorate their condition as left by the war, to shield and defend them from what I deemed an unwisely rigorous policy, to rehabilitate them with all the political rights, that by prudent and vigilant use of them they might secure to themselves good government and renewed prosperity. No one can truthfully say I have not freely used every influence my position and humble ability gave me for the accomplishment of these results. But I was as pronouncedly and unqualifiedly opposed to secession as any man could have been in favor of it. No reasonable man would expect me to become its advocate or defender in Congress, and the defense of the leaders, arraigned for the mode of conducting the war, manifestly might be appropriately left to members who co-operated with them in carrying it on — were better prepared by greater familiarity with the facts, and interested in vindicating the conduct of their leaders — than be

required of members who from the first disapproved secession, and would not likely have the same familiarity with the transactions complained of.

“ Though I have been as well abused and as wantonly misrepresented, and from as malicious and selfish motives, as any man in the State, I have not before this deemed it necessary to make any defense. But, on this occasion, the attacks are so extraordinarily monstrous in their moral deformities when their accuracy is tested by the public records of the country, that I felt it due as well to the people as to myself that they should know from these authentic sources, the facts. For in my retirement, now soon to occur, from all political position, I have the satisfaction of knowing that I never have been afraid to tell the people the truth, and then abide their ultimate judgment.”

In social life, Judge Hancock is a man of exceedingly popular traits of character. He is devoted and constant in his personal attachments, and has many warm friends throughout the State who would sustain him for any position of public trust, and would have been glad to have seen him occupy a place in Mr. Cleveland's Cabinet, as one who would have possessed the confidence of the North and would have been true to the interest of the South. But in his retirement from long public service he no doubt enjoys the sweetness of that repose which follows the conscientious performance of honestly conceived duty.

He was married in November, 1855, to Miss Sue E. Richardson, who is a native Texan, and the granddaughter of Hon. Asa. Brigham, first secretary of the treasury of the Texas Republic. This admirable lady has woven into his busy life every charm of domestic felicity.

JOHN SAYLES.

This eminent lawyer and legal writer is a native of New York and was born in Vernon, Oneida County, on the 9th of March, 1825. His father, an eminent physician, and a native of Rhode Island, was of English descent and belonged to one of the oldest families of the country. His ancestor came to America in the ship with Roger Williams, and afterwards married his daughter. The mother of John Sayles was the grand-daughter of John Sergeant, a celebrated divine and missionary to the Stockbridge Indians of Massachusetts, and was connected with the families of Edwards, Dwight and Sedgwick, which have produced many members distinguished for their scholarly learning and ability.

The early advantages of the subject of this sketch were good. He was educated at an academy in his native town and at Hamilton College, New York. His father was a man of limited means, and in his fifteenth year young Sayles taught school to help to defray the expenses of his collegiate course. On leaving college in 1844, he found his fate depending entirely on his own resources; but buoyed by his genius and ambition, and supported by the staff of a virtuous resolution, he stepped boldly upon the journey of independent life; and while no glittering prospects at that time charmed his view, his destiny was haloed with the devout benizons of a father's blessing and the hallowed guerdon of a mother's prayers. These were his only patrimony. With these he went forth, and his energy and determination soon cleared away the untoward circumstances that clustered in his pathway.

Soon after having completed his course in Hamilton College, seeking for a propitious field for his labors, he turned his eyes towards the South, as if impelled by those

warm and generous feelings which sought and found a congeniality among its hospitable people, and in 1844 went to Georgia and engaged in teaching there one year. In 1845 he removed to Brenham, Texas, where he taught school a year and a half. He studied law while engaged in teaching and was admitted to the bar at Brenham in 1846, where he has since continued to reside and practice.

He was a member of the Fifth Legislature in 1853-55, and was chairman of the sub-committee to which was referred the criminal codes reported to that Legislature. With this exception he has never permitted the attractions of political office to allure him from the jealous duties of his profession, which he loves with the fondness of a devotee.

In 1849 he married Miss Mary Gillespie, a most excellent and accomplished lady, the daughter of Barry Gillespie, a prominent lawyer of Washington County, and soon afterwards formed a copartnership with his father-in-law, which continued until the death of the latter in 1851. After which he was associated four or five years with W. T. McFarland, and in 1857, the firm of Sayles & Bassett was formed, and continues to exist.

He was early imbued with the sentiments and principles of the people with whom he had cast his lot, and became thoroughly Southern in his views. When the Civil War began in 1861, he was made brigadier-general of the Texas militia and was subsequently adjutant-general on the staff of General Magruder in the Confederate service.

As a lawyer General Sayles is brilliant and profound. The faculties of his mind are quick, energetic and grasping, and are always at his command. He has mastered every principal feature of law, and his familiarity with fundamental principles, the philosophy of legal science and the decisions of the courts, furnishes him with a store of precedent from which his genius never fails to model an apt analogy. He is quick to perceive the substance and character of a proposition, and his powers of analysis readily penetrate the most complex questions of law and fact. His cases are carefully and thoroughly prepared, and he is thus

prepared not only to avail himself fully of the merits of his own side of the question, but to anticipate the points made by his adversary. He embodies his thoughts with the interest of his clients and clings to their cause with the fidelity of a zealot.

His arguments are always logical and closely woven, and the presentation of his cases clear, forcible and convincing. His opinion, as special judge, in *The State v. Delesdenier*, 7 Texas, 95, is an exemplification of eminent judicial qualities; and his elaborate argument in *Hancock v. McKinney*, 7 Texas, 384, and in *Fowler et al. v. Stoneum*, 11 Texas, 478, in the former of which he discussed the character of concessions and the difference between perfect and imperfect titles, and in the latter the question of fraudulent conveyances, are strikingly illustrative of his qualities as an advocate.

While Gen. Sayles has given to his profession all that allegiance which Lord Eldon says it demands, his knowledge of law, combined with his fondness for its philosophy and literature, the energy and business qualifications which abetted and developed his talents, led him into the paths of legal tuition and authorship. In 1880 he was one of the law faculty of Baylor University, near Brenham; and his law works are of great merit and value. These are well known to the profession, and are entitled: —

“A Treatise on the Practice in the District and Supreme Courts of Texas.” First edition, 1858; second edition, 1873; third edition, 1882.

“Treaties on the Civil Jurisdiction of Justices of the Peace in the State of Texas.” First edition, 1867; second edition, 1877; third edition, 1882.

“Treaties on the Principles of Pleading in Civil Actions in the Courts of Texas.” 1872.

“The Probate Laws of Texas.” 1871.

“Constitution of Texas, with Notes.” First edition, 1872; second edition, 1884.

“Laws of Business and Form Book.” 1872.

“Notes on Texas Reports.” 1874.

General Sayles is also a bright and devoted Mason, and in 1852 was Grand Master of the Grand Lodge of Texas, and has prepared a work entitled "Texas Masonic Jurisprudence," which has passed through two editions; the first in 1879, and the second in 1882.

These works are of the greatest utility. They are in general use throughout the State, and are considered the standard authority upon the various subjects of which they treat. He is personally a great favorite with the courts and the bar of the State. His frank, open and amiable character, his brilliant talents and legal accomplishments, render him an ornament to his profession, and he is esteemed and loved by his neighbors and friends.

NATHAN G. SHELLEY.

Nathan George Shelley was born in Hawkins County, Tennessee, on the 20th of February, 1825. His father was a brick mason, and, in search of labor, moved his family to Talladega County, Alabama, while Nathan was a boy.

The educational advantages of N. G. Shelley, were due to his own exertions and were confined to such opportunities as intervened while laboring with his father as a brick mason. His time thus alternated between mental and physical labor until he reached the age of sixteen years, when having saved some means allowed him for his labor, he entered Emory and Henry College, in Virginia, in 1841, and remained there one year, when it became necessary for him to return to his home and resume the pursuit of his trade to relieve the necessities of his family occasioned by the financial embarrassment of his father. He immediately took charge of his father's business, and while thus shouldering the responsibilities of the family he began the study of law under the tuition of Messrs. Chilton & Rice, both of whom have since that time held the office of chief justice of the State. But in 1846 he imbibed the patriotic spirit excited by the Mexican war, and having heard of the battles of Palo Alto and Resaca de la Palma, he left his studies and enlisted for the war as a private soldier in a company organized and commanded by his uncle, Captain Jacob D. Shelley, and served the time for which he had enlisted.

At the termination of the Mexican war he returned to his home in feeble health and without means, and accepted employment for a season as a clerk in a wholesale grocery store. He afterwards, in order to obtain means to pur-

sue the study of law, served as deputy clerk of the Circuit Court.

In 1849 he received his license to practice from the Circuit Court at Talladega, and, in connection with such practice as he could obtain, took charge of the editorial department of the *Alabama Reporter*, a newspaper published at Talladega, and during the two years he was connected with that journal gained considerable reputation as a terse and forcible writer, and exerted a recognized influence in the arena of politics.

In 1851 he was elected to represent his county in the Legislature of the State, and was re-elected in 1853. In this capacity his intellectual and physical energies had a broader and more prominent scope, and he promoted the interests of his constituency in a manner which gave the highest satisfaction and gained for him both patronage and popularity.

In consequence of failing health he spent the winter of 1854 in Texas, and was so much benefited by the climate that he determined to seek a home in the State, and in 1855 removed to Austin, where he still resides.

In 1856 he formed a copartnership with W. H. D. Carington, Esq., which continued until the civil war, and his practice constantly increased as his abilities and energies became known to the people.

In 1861 he was chosen to represent Travis County in the Legislature, and in 1862 was elected attorney-general of Texas, and held that office more than a year after his term had expired, in consequence of the declination of his successor to qualify. During this time he was sent by the Governor of Texas to Richmond to adjust the accounts of the State with the Confederate government for frontier service, and on his return connected himself with the command of his brother, and was with the army of Gen. Joseph E. Johnson in the campaign from Dalton to Atlanta. The object of his mission was accomplished with ability and fidelity, and in a manner satisfactory to all parties.

During the war he was made brigadier-general of Texas State troops, and his services everywhere were rendered

with zeal and efficiency ; and his devotion to the cause which he had espoused never wavered, nor did his spirit wane so long as there was any hope of its success. But when the curtain closed over the scene, he yielded complacently to the just demands of the result, and was content with the possession of honor.

At the close of the war he returned to the practice of his profession, and formed a copartnership with Judge George F. Moore, which continued until the latter was again elected to the Supreme bench ; and when Judge Moore was removed by military authority their copartnership was resumed and continued until the latter was elected the third time to the bench of the Supreme Court. He afterwards formed a copartnership with Judge John Hancock, which still exists.

General Shelley is a lawyer of fine ability, and a man of the sternest integrity. He possesses a profound knowledge of law, and his powers of research are acute and indefatigable. He is true and faithful to his clients, and a man of exemplary character in all the relations of life. His mental vigor, accurate judgment, and intense application render him a safe counselor, and he has been eminently successful in all the branches of the profession. He has been engaged in many important cases, and in many involving questions of first importance in the jurisprudence of the State, among which may be mentioned the following: —

Fisk v. Miller, 20 Texas, 572, which was a suit for injunction, and to obtain a second action for defendant, as allowed plaintiff in trespass to try title by statute. Held, that the right of a second suit was not given to defendant.

Mitchell v. Burdett, 22 Texas, 633. Defendant must show the incidents of ownership as specified in the statute, and all these continued in connection for the full period of five years, to maintain the plea of limitation.

Dorn v. Dunham, 24 Texas, 366. This case involved the question of possession in good faith by one who purchased of a tenant in common a specified portion of the common estate.

Green v. Bank, 24 Texas, 508-522.

Houston, Top. & B. R. R. Co. v. Randolph, Treasurer, 24 Texas, 317. Establishing a rule upon the subject of *mandamus*.

Berry et al. v. Shuler, 25 Texas, 140, 143. The rule under the statute giving effect to appeal and writ of error bonds as judgment liens from the date of execution.

Ex parte F. H. Coupland, 26 Texas, 386. This case involved the question of the constitutionality of the Conscript Act of the Confederate States Congress. He was attorney-general at the time.

Cherry v. Speight, 28 Texas, 503. This was a suit upon a judgment in favor of an administrator of an estate in Mississippi to enforce payment out of assets brought to Texas, in the hands of the administrator of the judgment debtor who died after judgment in Mississippi.

RICHARD B. HUBBARD.

Richard Bennett Hubbard, minister of the United States to the Japanese Empire, was born in Walton County, Georgia, in the year 1834. He enjoyed excellent early advantages and graduated with honor at Mercer University in 1851. Having afterwards attended a course of law lectures in the University of Virginia he graduated in the law department of Harvard College in 1852, and soon afterwards removed to Texas and located in Tyler, where he entered upon the practice of his profession and has since continued to reside. He was a young man of amiable disposition and exceedingly popular manners, which, with his fine talents, introduced him at once to public notice and favor, and his professional advancement was rapid and continuous. But his patriotic and beneficent traits of character naturally inclined him to the field of politics and in 1855 he relinquished a large and lucrative practice and entered upon the canvass of the State in the interest of the Democratic party against the Know-Nothing organization. The earnestness of his manner and the brilliancy of his oratory fascinated the people and his services were of decided and enduring value to his party.

In 1852⁶ he was sent as a delegate to the convention at Cincinnati, which nominated Mr. Buchanan for the Presidency and at the request of many leading Democrats canvassed Texas in advocacy of his election. Through the influence of General Rusk and J. Pinckney Henderson, who were impressed with his ability and usefulness, he was appointed by Mr. Buchanan United States attorney for the Western District of Texas, and discharged the duties of that office with distinguished efficiency until 1858, when he resigned it and was chosen to represent his county in the

Legislature, in which his services were again conspicuous. In 1860 he was elected one of the delegates from Texas to the Charleston Convention, in which he was an ardent supporter of Breckinridge and Lane, and exerted all his powers to secure their election in the heated contest of the campaign which ensued.

Mr. Hubbard was deeply imbued with the principles which actuated the Southern people in their withdrawal from the Union. The sentiments which prompted their action inspired his political faith and he stepped boldly into the current of events which flowed from it. He favored secession as the only means for the accomplishment of what he conceived to be a righteous end, and when hostilities began he raised and commanded the Twenty-second Regiment of Texas infantry and served in the field until the close of the war. He then returned to Texas and devoted himself to agricultural pursuits on his farm in Smith County, until his political disabilities were removed, when he assumed his practice and has since devoted himself almost exclusively to his profession.

He was chosen by the Democratic Convention of 1872 one of the electors for the State at large on the Greeley ticket, and by his eloquence and energy contributed largely to the majority which Texas gave to that candidate. In 1874, he was the president of the Democratic State Convention which assemble at Austin, and was made chairman of the State executive committee. He was also a prominent candidate for the nomination for Governor, having received the next highest vote to that which nominated Governor Coke, and was afterwards declared to be the unanimous choice of the convention for the office of Lieutenant-Governor, to which he was elected by over fifty thousand majority. By virtue of this office he presided over the Senate of the Fourteenth Legislature, and his presidency of that body was characterized by a fairness, fidelity and ability which gave full satisfaction to the members and elicited the highest praise of the people. The new Constitution of 1875 vacated all the offices of the State, and in the following convention at Galveston he was

re-nominated for Lieutenant-Governor by acclamation and was re-elected by more than a hundred thousand majority of the popular vote.

In December, 1876, he was elected to the gubernatorial chair in consequence of the election of Governor Coke to a seat in the United States Senate, and his administration is noted for being one of the most efficient and felicitous in the history of the State. The protection he afforded to the inhabitants of the frontier, his stern and energetic suppression of crime produced a feeling of safety which drew many immigrants to the State, and set in motion a flowing tide of prosperity. The measures of reform, which he especially advised in regard to public economy and finance, are characterized by the highest order of wisdom and foresight, and infused a healthful spirit into public polity.

His recommendations in regard to the funding of pension bonds, the transportation of prisoners, the lease of convicts, the limitation of official perquisites and the disposition of the public school lands, have been for the most part adopted by the laws of the State. But he was not in favor of a policy of false economy. While he advised the retrenchment of public expenditures within the means of the State to pay promptly and with honor, he advocated an enlightened and liberal statesmanship, which would "not by miserly compensations" drive the ablest judges from the bench, the most faithful clerks from their desks, and the soldiers from their frontier posts, and he favored the bestowal upon the institutions of charity, the colleges, universities and free schools of Texas an intelligent liberality worthy of its dignity and the civilization of the age. Referring to the merits and defects of the new Constitution, in his retiring message in 1879, he said: —

"A final report from the retiring executive at this time would be incomplete in the absence of any allusion to our organic law and a statement of its practical operations during the period which has elapsed since it went into effect. Adopted by a very decided majority of our voting people, there were still serious misgivings on the part of many who gave their sanction to it at the polls that some of its novel

and untried provisions would prove impracticable, and that the many restrictions thrown around the practical machinery of the State would, in the end, seriously embarrass the government and produce confusion in its administration. But looking back now at our recently past history and reviewing the difficulties which have presented themselves and those which we have surmounted, it is ascertained beyond question that the fears of a respectable minority of our people were not well founded and that our organic law, although still imperfect in some of its details, has demonstrated its excellence by practical experience and operation, and should not be idly displaced and tampered with. Under its salutary effect the accumulation of public indebtedness has been wholly curtailed, the outstanding debts of many counties have been extinguished, the annoyance and expense of special litigation have been almost altogether abolished, the public revenues of the State have been better collected, crime has been more thoroughly detected and punished, and the dockets of many of our inferior courts have been cleared of their accumulations and speedy justice administered between litigants in accordance with the behest of our Bill of Rights.

“Some of these blessings might have been possible of accomplishment under former systems, but for a majority of them we are indebted to our present Constitution. It could not be expected that it would prove wholly good, coming, as it did, from human hands, but in approaching the delicate task of its amendment, we should be mindful of the good developed in it and take care to hold fast to that, while reaching out for the attainment of additional excellence and the correction of manifest defects. In principle, an organic law should be seldom interfered with by legislation, but should remain fixed and stable, to be studied and understood by the people, with the aid of constantly recurring expositions from our highest courts and wisest judges. Frequent changes tend to beget a spirit of unrest and to induce a want of respect for that which has become the key-stone of American republicanism. A fixed written Constitution for each State and the nation, constitutes the distinguishing

characteristic of our system of republican government, and the corner-stone of our future hopes as a people. Let us not so act as to educate our people to look for constant change at each recurring session of the Legislature, but at the same time let us not flinch from the responsibility of proposing such corrections as the necessities of the State imperatively demand at our hands.

“From careful observation, it occurs to me that the chief defect in our present Constitution arises from the inadequate machinery provided by it for the dispatch of litigation when appealed to our higher courts. The overcrowded state of our appellate dockets was appreciated by the convention which framed the constitution, and steps were taken by that body to provide adequate relief therefor, by the creation of a Court of Appeals, and vesting it with jurisdiction over appeals in all criminal cases. This action, it was thought, would afford sufficient relief to the dockets of our Supreme Court to enable that tribunal to dispatch all civil business then standing upon the dockets, and also new business that might come before it. A limited experience of scarce three years has disappointed our just expectations and demonstrated the urgent necessity for further relief. Notwithstanding the division of labor so inaugurated, our Supreme Court is further behind in its business than at the date of the adoption of the Constitution; and the Court of Appeals which, the first year of its existence, kept even pace with the business upon its dockets, since the expiration of that time has found itself unable to dispatch appeals as fast as they accumulate, and as a consequence, its dockets at Austin and Galveston, and especially at the former place, show a large accumulation of cases undisposed of and awaiting action. No candid citizen who has had an opportunity for observing the amount of labor performed by the judges composing the two courts will hesitate to attribute this lamentable condition of affairs to the inadequacy of the system, and not to the dereliction of the individuals composing the two courts. Of all the public servants of the State, none are compelled to perform such ceaseless labor as they; and it is due to them,

in a lesser measure, as well as to the public interest in a greater, that machinery fully adequate to the speedy dispatch of business be provided without delay, by preliminary suggestions of the Legislature and ratification by the people. In the multiplicity of the theories for relief, and the almost universal conflict of opinion thereon, I can not hope that any suggestions I may make upon the subject will escape hostile criticism, or commend itself to the judgment of even a majority of your honorable bodies, but my purpose will be fully effected by drawing your early attention to this most serious grievance, leaving you in your combined wisdom to adopt some measure that will afford immediate and effective relief to the people of the State; for they are the sufferers from this condition of things. Nor can I be expected to do more than convey a general outline of my impressions in a communication like this, without attempting any discussion or going into detail.

“The Court of Appeals has demonstrated its capacity to dispatch all appeals of a criminal nature, and I can see no reason why their jurisdiction should not be limited exclusively to that character of business. It is most important to the State and to every citizen, financially as well as morally, that our judicial machinery for the suppression and punishment of crime should be fully adequate to our necessities, and in case of conviction, as little delay as possible should occur in the decision of appeals taken therein. The certainty and celerity of punishment is the most important factor in the suppression of crime, and as by experience we have ascertained that the disposal of appeals in criminal cases will occupy the full time of the court, sound policy would seem to dictate that it should be relieved of its civil jurisdiction in the former class of cases, rather than we should embark upon further experiments, by its abolition or consolidation with other tribunals. With the consolidation of all civil business in the Supreme Court, the danger of conflict in decisions is greatly decreased, if not altogether dissipated, and the main argument against separate tribunals is met and answered.

“Whatever reform may secure the approval of your hon-

orable bodies, I must be pardoned for reminding you that the vast extent and varied interests of our State, and the immense population, present and prospective, within its borders, demand a judicial system of no ordinary character, and that a system suited to small States, or to ours in its infancy, will not suffice for us now. Two millions of people can not have their rights adjudicated by a judicial machinery provided for and adapted to the wants of three hundred thousand; and in applying a remedy to these defects, let us not sacrifice *efficiency* for the sake of false *economy*, but let us rather preserve the methods of a true economy by providing courts in which 'every person, for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law.' "

The administration of Gov. Hubbard gave satisfaction to all classes of people, and at the Democratic nominating convention of 1878, before which he was not a candidate, he received the unmistakable assurance of popular favor expressed in the following resolution introduced by Judge Thomas J. Devine, and adopted with but two dissenting votes: —

" *Resolved*, That it is the sense of this convention that the administration of Gov. Hubbard has been eminently wise and just, and that he deserves the unqualified approbation of the people of Texas."

In 1876 Gov. Hubbard delivered a Centennial oration which was extensively published, both in this country and in Europe, and has been, no doubt, the means of inducing many people to emigrate to Texas. He appeared in 1879 before the Merchant's Exchange of St. Louis, and presented the inducements which Texas offered to the capitalists of that city for the investment of their means, and succeeded in engaging them to build the Grand Trunk Narrow Gauge Railroad from Texarkana to the Rio Grande, for which he has been the general attorney.

In 1884 he was sent as a delegate to the convention at Chicago which nominated Mr. Cleveland for the Presidency, and was chosen temporary chairman of that assembly, in which the dignity of his bearing and the urbanity of his

manners gained for him great respect and admiration. His portly appearance was accepted as typical of the grandeur of the event, and as auspicious of the magnitude of its result. It is an inherent element in the human mind, which can not be entirely eradicated by culture and experience, to associate great deeds and eminent qualities with a powerful physical organization, and when we are reminded that the mighty Achilles, after slaying the great Hector, succumbed to the comparatively feeble javelin of Paris, and that the fragile sling of David was more effective than the ponderous beam of Goliath, we are disposed to refer it to the miraculous. Whether it may be ascribed to a state of mind kindred to that produced by sublimity, or to some subtle mesmeric agency, it is certain that a portly physical aspect and stentorian tone of voice, when there is no apparent effort to daunt or overawe, add greatly to the force of an orator and advocate; and when these are really combined with great powers of intellect the pre-eminence is complete.

Governor Hubbard possesses a large and vigorous mind as well as a huge physical form, and as an orator he has received the sobriquet of "the Demosthenes of Texas." He possesses in a high degree the power of feeling and making others feel an appreciation of the sentiment, "*Si vis me flere, primum dolendum est tibi*," the eloquence of passion. "The highest order of eloquence," says Mr. Blair, "is always the offspring of passion. A man may persuade others to act, by mere reason and argument; but that degree of eloquence which gains the admiration of mankind and properly constitutes an orator, is never found without warmth or passion. * Passion, when in such degree as to arouse and enkindle the mind without throwing it out of the possession of itself, is universally found to exalt all the human powers. It renders the mind infinitely more enlightened, more penetrating, more vigorous and masterly, than in its calmer moments. A man actuated by a strong passion becomes much greater than he is at other times; he is conscious of more strength and force, he utters greater sentiments, conceives higher designs, and executes them

with a boldness and felicity of which, on other occasions, he would think himself entirely incapable.”

But to awaken this passion described by Mr. Blair there must be some inspiring influence, some ruling motive. This may be, as it often is, a selfish ambition or a desire of applause, or it may arise from the softer emotions of the heart, or from a spirit of patriotism in which are blended all the noblest sentiments of humanity. To this last we may ascribe the inspirations which characterize the best eloquence of Governor Hubbard.

During the presidential campaign of 1884, at the request of the Democratic National Committee, he canvassed the State of Indiana for the election of Cleveland and Hendricks, and his visit was everywhere received with the greatest appreciation and applause. His imposing personal appearance, fine powers of oratory, placid manners, and flow of humor enlisted the good will of the people for himself and his section as well as for his cause, and his services and ability have been recognized in his recent appointment as Envoy Extraordinary and Minister Plenipotentiary of the United States to the empire of Japan.

Ex-Governor Hubbard has been twice married. His first wife was Miss Eliza Hudson, daughter of a distinguished physician of Lafayette, Alabama, and his second one was Miss Janie Roberts, of Smith County, Texas; a lady whose charming grace and winning manners have added to the popularity and success of her husband.

A. J. PEELER.

The subject of this sketch, one of the most eminent members of the bar of Texas, was born in Harris County, Georgia, on the 22d of April, 1838. When he was about ten years of age he immigrated with his father's family to Florida, where he resided until the spring of 1873 when he removed to Texas. His educational advantages were good, and before he had attained the age of majority he was admitted by a special act of the Legislature of Florida to practice law in all the courts of that State. He received his license from the Circuit Court at Tallahassee, the capital of the State, in 1857, and entered at once upon the practice of his profession at Newport, a small town about twenty miles from the capital. He remained there about two years and was then elected clerk of the Supreme Court, an office at that time of considerable importance, and which under the Constitution was required to be filled by joint ballot of the two Houses of the Legislature. He continued in this office, and at the same time attended to such practice as he could obtain until the outbreak of the war between the States, when he immediately entered the army and served first under General Bragg at Pensacola and afterwards under General Lee in Virginia until the battle of Gettysburg, in which he was wounded and taken prisoner. At the time of his capture he was first lieutenant in Company I of the Fifth Regiment of Florida Infantry, and had served for a long time as adjutant of that regiment. For several days previous to the battle he acted as aide-de-camp to Colonel Lang, who was in command of the Florida brigade. On the second day of the battle, and just before the order to charge was given, Lieutenant Peeler, who was mounted, was sent to bring forward some men who

had been stationed a short distance from the main line of battle. He returned with them just as the charge was begun, in which he joined and went through the fight on horseback until he was wounded, being the only mounted officer of the command. Of his gallantry on that occasion and also at the battle of Chancellorsville much was said by his comrades and the newspapers of the time. Having remained more than a month at Camp Letterman hospital, which was established near the battle-field, and afterwards a short time at the West's Building hospital in Baltimore, he was sent with a large number of other Confederate officers to Johnson's Island, in Lake Erie, where he was confined as a prisoner of war until a short time before the surrender of General Lee at Appomattox. Besides the battles of Chancellorsville and Gettysburg he participated in the battle of Fredericksburg and other fights in the hard fought fields of Virginia.

On being released from prison he returned to his home in Tallahassee, resumed his profession and engaged quietly but vigorously in the great struggle which was now common to all the Southern people — to procure meat and bread for themselves and families. He did not possess a cent, but was soon afterwards fortunate enough to be employed in the defense of a quartermaster of the United States army, who was being tried by a court-martial. And it is a singular incident that an ex-Confederate officer, with even the Confederate buttons upon his worn and tattered coat, which under military orders were required to be covered, should have earned his first fee in appearing before the handsomely uniformed officers of the United States army and in representing an officer of that army. A dollar in greenbacks seemed then to be a fortune, and he counted several hundred of them for his fee in this case, and says that he never felt so rich in his life. In quick succession he appeared in various important cases before military commissions. The determination of all controversies, for a while, even those involving the life and liberty of the people of the South, rested with these tribunals, and his services were valuable to his countrymen.

When the convention to form a State Constitution under President Johnson's scheme of reconstruction was called, Mr. Peeler was made Secretary of that body, and to him the convention confided the duty of arranging and publishing the Constitution. Upon the adjournment of the convention he was appointed by Provisional Governor Marvin with the Hon. Chas. H. Dupont, ex-chief justice of the Supreme Court, and the Hon. M. D. Papy, ex-attorney-general, to report a revision of all the laws of the State to the first Legislature to be held under the new Constitution — the object of the revision being to adapt the laws to the changed condition of things, brought about by the abolition of slavery, etc. Mr. Peeler was elected a member of this Legislature, and the fact that he had been a member of this commission and that the greater part of the labor of the Legislature was devoted to the consideration of the matters covered by its report, and with which he was necessarily more familiar than any other member of the body, gave to him a special prominence in its deliberations. Though always afterwards taking an active interest in the political affairs of the State, from 1866 up to the time of his removal to Texas, he declined to be a candidate for any other political place, devoting himself exclusively to his practice, which constantly increased, both in number and importance of the cases. He was a delegate to the first National Democratic Convention after the war, held in Tammany Hall, in New York, in 1868, and regularly attended as a delegate all the State Conventions, besides discharging the full measure of his duty upon the stump whenever called upon, being always, and at all times and under all circumstances, a staunch Democrat. For several years before Mr. Peeler removed to Texas he represented, in connection with his partner, the Hon. M. D. Papy, the Jacksonville, Pensacola and Mobile Railroad Company in its most important litigations. He also represented the Trustees of the Internal Improvement Fund of the State in an equity case in the United States Circuit Court, involving very large interests and presenting questions of unusual difficulty and importance. Some idea of the questions involved in this case

may be gathered from *Vose v. Reed et al.*, Trustees, decided by Mr. Justice Bradley, and reported in 1 Woods, 647, where Mr. Peeler's name appears as first among counsel for defendants. He also, in connection with the Hon. George P. Rainy, then his partner and afterwards attorney-general and now associate justice of the Supreme Court represented Governor Reed in his celebrated *quo warranto* proceedings before the Supreme Court of the State. The contest in this case was between Reed, the Governor, who had been impeached by the Senate, and Gleason, the Lieutenant-Governor, who insisted that he was entitled to the reins of government pending the impeachment. Though the fight was a fight between the two wings of the Republican party, which at that time had control of the State, it was one to which no citizen of the State could be indifferent, threatening, as it did, bloodshed and anarchy, destructive alike to the interests of all. Though exceeding, perhaps, in feeling and excitement the celebrated contest between Bashford and Barstow (4 Wis. 567) for the governorship of Wisconsin, it resembled that case in many of its features. The argument of Mr. Peeler before the Supreme Court was given wide publicity in the papers, and to his effort and that of his able associate is due in a great measure the judgment rendered in their favor, which resulted in the peace and order of society which soon followed. An elaborate report of this case will be found in 12 Florida Reports, p. 190. Gleason after his defeat made an ineffectual attempt to carry the matter to the Supreme Court of the United States (*Gleason v. Florida*, 9 Wall. 779).

Notwithstanding Mr. Peeler's prominence at the bar of Florida and his large and valuable practice, like many others he grew tired of the constant turmoil and passion so constantly incited and maintained by the dominant party between the two races and determined to seek a new home. Austin being the capital of Texas, with Supreme and Federal courts — courts with the practice of which Mr. Peeler was familiar, he determined to make it his future home, and where since the early part of 1873 he has resided. Mr.

Peeler, soon after settling in Austin, received retainers in several important cases, especially in the Supreme and Federal courts, and began at once to build up a practice. Messrs. W. J. Montgomery and A. S. Fisher were associated with him in the practice about two years, when, owing to the increase of business in the Supreme Court and the inability of the attorney-general to give it personal attention, the Legislature from the necessities of the case, created the office of assistant attorney-general, and it was tendered to Mr. Peeler by Governor Coke. Mr. Peeler accepted and was the first to hold the position. His term having expired, he was a second time appointed by Governor Coke, and was in each instance unanimously confirmed by the Senate. At this time the Hon. George Clark was attorney-general, and it may be said without disparaging any of the distinguished gentlemen who have since held these places, that the office of attorney-general as conducted by the Hon. George Clark and Mr. Peeler gave entire satisfaction to the courts, the bar and the people. So conspicuous were Mr. Peeler's services at the Tyler term of the Supreme Court in 1875, that upon the conclusion of its labors at that place the following complimentary note was handed to him: —

“ SUPREME COURT ROOM }
“ TYLER, December 15, 1875. }

“ *Col. A. J. Peeler, Assistant Attorney-General —*

“ SIR: In closing the labors of a three months' session of the Supreme Court, upon which you have attended as the representative of the government, we deem it proper to express to you our entire satisfaction at the manner in which you have discharged the very arduous duties devolved upon you and our conviction that the interest of the public and the citizen has alike been protected by your labors.

“ O. M. ROBERTS,

“ R. A. REEVES,

“ GEORGE F. MOORE,

“ ROBERT S. GOULD,

“ JOHN IRELAND.”

An examination of the 43, 44 and 45 Texas Reports will show the extent of Mr. Peeler's labors in behalf of the State before the Supreme Court. But perhaps the most important duty discharged by him while holding the office of assistant attorney-general was in making a thorough and exhaustive examination of the management of the State penitentiary at Huntsville and in preparing and submitting an elaborate report of his investigation. Under the law creating the office of assistant attorney-general, power was given to the Governor to assign to this officer such duties as he thought proper. In the early part of 1875 the public mind of the State was greatly excited over newspaper reports of alleged mismanagement and cruel treatment of convicts by the lessees of the penitentiary. Governor Coke appointed a commission consisting of Messrs. Peeler, D. H. Triplett and Tillman Smith to thoroughly investigate the matter. The investigation was continued for some two months — the commissioners visiting the penitentiary, the various camps where convicts were stationed, and examining many witnesses. Upon the conclusion of their labors Mr. Peeler, from the large mass of material before him, prepared a report which was printed by the State and was used by the departments of the government, the Constitutional Convention of 1876, and succeeding Legislatures as a book of reference. Instead of submitting a mere sensational report, Mr. Peeler went thoroughly into the whole subject — giving a full history of the penitentiary from its organization, compiling all the laws in relation to it, setting out the leases, giving copies of all documents and explaining the relation of the lessees to the State and their rights and liabilities under their contract and the management of the penitentiary while under their control. This report also contains a great deal of valuable matter collected from outside sources showing the policy pursued in other States in the discipline and treatment of convicts. No official report in this State, up to that time, had been more complete and exhaustive and none could have been read with greater interest.

Apprehending that the State might be compelled at any

time to resume control of the penitentiary, Mr. Peeler, at the request of Governor Coke, drafted the law authorizing its resumption by the State, which will be found in the General Laws of the Fifteenth Legislature, page 193, and which was passed as prepared by him without any material change. This law afterwards made an important figure in the litigation between the State and the lessees. Mr. Peeler also, at the request of Governor Coke, drew the forgery law of July 28, 1876 (see General Laws, p. 59). The extent to which land forgeries were being committed at that time and the boldness of the perpetrators of these frauds, both within and without the State, was an overshadowing evil—one, in the suppression of which prompt and severe measures were required. Mr. Peeler was engaged several weeks in the preparation of this law, carefully examining the forgery statutes of the United States and of other States and Territories in the Union. No law could be drawn with more exact regard to every conceivable detail in this class of crime. And through this law forgeries of land titles in Texas were so completely crushed that it is a rare thing now to find a forgery case upon the criminal docket. The able commissioners who prepared the present revision of the laws of Texas thinking this subject perhaps sufficiently covered by the more general provisions of the criminal code, omitted the law prepared by Mr. Peeler, but the Legislature being unwilling to take the chances of dispensing with a law which had accomplished such useful results, restored it *in totidem verbis*, and it so stands on the statute book. It has often been discussed by the Court of Appeals, and though furiously assailed, upon constitutional and many other grounds, it has been sustained; and it may be said that no single act of legislation affecting the criminal jurisprudence of the State has occupied a more prominent place than this law.

With the view of devoting himself exclusively to his profession, Mr. Peeler resigned the office of assistant attorney-general in October, 1876. Governor Coke, in accepting his resignation, which he stated he did with extreme regret, said: "The rare ability and great labor and learn-

ing which has distinguished your administration in the attorney-general's office, and your honest fidelity to all the interests of the State under your official care, entitle you eminently to the plaudit 'well done,' so grateful to the conscientious public servant. I take great pleasure in testifying to the thoroughness, watchfulness and skill which has characterized the discharge of your duties, and your great efficiency as a public officer."

Attorney-General Boone, in a communication to Mr. Peeler touching his resignation, uses this language: "I would be doing injustice to you and a grosser injustice to my own sense of honor were I not frankly and cheerfully to acknowledge that your counsel and assistance have been to me invaluable. I have always found you ready, willing and able, conscientious and zealous in the discharge of your official duties and as jealous of the reputation of the Attorney-General's Department as of your own. I regret your resignation and feel that the State has lost a faithful, able, and efficient officer, and I, an assistant to whom I am indebted in a very large measure for whatever of success with which the duties of this department have been discharged since I became its chief officer. I add with the greatest pleasure that you have always been kind and courteous; and our association, official and personal, has been to me most pleasant and agreeable." And among other complimentary notices from the press, the *Galveston News* said: "Those who have been conversant with the laborious and difficult duties of the office of the assistant attorney-general under the administration of Governor Coke, and the efficiency with which they have been discharged by Col. A. J. Peeler, will note with regret his resignation. An able and studious lawyer, a cultivated scholar, a conscientious and valuable public servant, as Col. Peeler proved himself to be, will not be permitted to withdraw himself from the public service without a proper recognition of his eminent usefulness. A professional man of such merit is not often appreciated by his political superiors, but the public will recognize him according to his worth."

Governor Hubbard, who succeeded Governor Coke, upon

the election of the latter to the United States Senate, determined, under the authority given by the act above mentioned, to resume control of the penitentiary. To resist this movement on the part of the State, Messrs. Ward, Dewey and Patton, the lessees, employed able counsel, Messrs. Hancock & West, representing Ward and Dewey and ex-Gov. E. J. Davis representing Patton. The difficulties, to say nothing of the magnitude of the interest involved, which confronted Gov. Hubbard in attempting this resumption were very considerable. Mr. Peeler having necessarily given much attention to the subject, while assistant attorney-general, was at once engaged to represent the State in the matter. It was under his advice and upon papers prepared by him that the Governor proceeded at every step in this important matter. To avoid, as far as practicable, the question of the right on the part of the State to seize the penitentiary and convicts against the wishes of the lessees, Mr. Peeler prepared the correspondence between the Governor and the lessees, in which the right of the State at a certain time to peaceably take control was conceded. The Hon. C. S. West, now of the Supreme bench, representing the lessees and Mr. Peeler representing the State, visited the penitentiary at the time of the resumption in April, 1877, for the purpose of advising as to the manner in which it was to be effected, and the property turned over, etc. Many questions of importance and difficulty had to be settled, notably the manner of taking the inventory and appraisement of the property—the State desiring on the one hand to incur no liability and pay no higher price for the property than under the law and contract of lease it was bound to pay, and the lessees who had erected buildings, added machinery and accumulated a large amount of property, desiring to have the same taken back by the State upon the most favorable terms to them. Patton, one of the lessees, protested against the right of the State to resume control. The inventory and account being completed, showed as claimed by the State, a balance due to it of some \$72,000. Ward, Dewey & Patton recognizing no such indebtedness, claimed that the State was indebted to them in a very large

amount. Under the resumption law, the lessees, if not satisfied with the appraisement, were authorized to sue the State. As they declined to do this, Gov. Hubbard, after advising with Attorney-General Boone and Mr. Peeler, concluded to sue the lessees for the recovery of this alleged balance, deeming it best to have the matter settled by judicial determination than to leave it open to constant appeals for legislative relief. For this purpose he employed Mr. Peeler and his partner, T. S. Maxey, Esq., to institute suit. Suit was brought in the District Court of Travis County against the lessees and their bondsmen. The labor of the preparation of this suit and of the defense can hardly be overestimated. Several inventories consisting of hundreds of pages, with a vast mass of documentary testimony had to be examined with great care. Ward, Dewey & Patton, represented by the able counsel above mentioned, interposed every defense which could be made, and sought by way of reconvention to recover a judgment against the State for something like a half a million of dollars. A. S. Walker, judge of the Travis District Court, having at one time been of counsel for Ward, Dewey & Patton, being disqualified, J. H. Burts, Esq., now assistant attorney-general, was appointed special judge. The case was tried before a jury and occupied two entire weeks, each day's labor beginning early in the morning and ending late at night. Every inch of the ground was stubbornly contested, and few cases have received so large a share of public attention. The responsibility and anxiety of the counsel for the State, when a judgment for so large an amount was sought against it, can be readily appreciated. Hon. A. T. McKinney, of Huntsville, who had also been retained by Gov. Hubbard in the matter of resumption, assisted Mr. Peeler in the trial of the case. The trial resulted in a verdict for the State in the sum of \$15,000. The lessees carried the case to the Supreme Court, in which Mr. Peeler represented the State, and the judgment of the court below was affirmed. Thus ended one of the most important and difficult suits, perhaps, ever tried in any District Court in the State.

Mr. Peeler, by special retainer, in conjunction with his

former partner, S. R. Fisher, Esq., had previously represented the State in the Supreme Court, in what is generally known as the "Rio Grande Cases," brought under the act to adjudicate claims to lands situated between the Nueces and Rio Grande Rivers. The case of the State *v.* Cardinas, and other cases to be found in 47 Texas, show the nature of the questions and the extent of the interests involved in these suits. But the most important case with which Mr. Peeler has ever been connected, and one which stands almost unprecedented in the jurisprudence of the country, is what is known as the "Mercer Colony Case." The following communication from Mr. Peeler to the Governor of the State, together with the letters accompanying it, presents as succinctly as possible the history of this most remarkable litigation:—

"LAW OFFICE, AUSTIN, TEXAS, February 2, 1885.

"To His Excellency John Ireland, Governor of Texas —

"SIR: Having been retained by your predecessor to represent the State of Texas in what is generally known as the 'Mercer Colony Case,' I now have the honor to report to you the final disposition made of said cause; and in making this report it will be proper, as I have not been fully paid for my services, to give a brief history of the case that the nature and extent of such services may be understood.

"The suit grows out of a colony contract between the Republic of Texas and General Mercer, made January 29, 1844. This contract was the leading subject of debate in the Constitutional Convention of 1845. The original bill was filed March 6, 1875, in the United States Circuit Court, at Austin, by George Hancock, a citizen of Kentucky, who claimed as chief trustee to represent the rights of Mercer and associates against J. J. Gross, Commissioner of the General Land Office of Texas. Upon the death of Hancock, General William Preston became complainant, and William C. Walsh, succeeding Gross as Commissioner, was made defendant.

"It was claimed in the original bill that Mercer and

associates had introduced and actually settled under said colony contract 1,256 emigrant families, for which they were entitled to 1,256 sections of 640 acres each, being one section for each family, and in addition thereto 120 sections, being ten premium sections for each one hundred families, making in all 1,376 sections or 880,640 acres of land.

“ The nature of the relief sought by this bill is disclosed by an order for an interlocutory injunction granted April 12, 1879, as follows : —

“ ‘ That a writ of injunction do issue out of this court, and under the seal thereof, directed to W. C. Walsh, Commissioner of the General Land Office of the State of Texas, his clerks, draftsmen, subordinates, agents, servants, and employes, and all his successors in office, and all their clerks, draftsmen, subordinates, agents, servants, and employes, and all officers or agents subordinate to him, or to any of his successors in office, or under the direction, supervision or control of him, or of any of his successor or successors in office, enjoining him and them, and each and every of them, from issuing or delivering, or causing to be issued or delivered, or permitting to be issued or delivered, to any person or persons or corporation any plat or plats with a view of making locations within said colony limits, certificate or certificates, patent or patents, for any lands or land within the boundaries of Mercer’s colony, as set forth in the bill of complaint and the exhibits therewith filed, and therein defined, and from any further interference with or infringement of the land grant or land reservation known as Mercer’s colony, and from doing or causing to be done any act or thing whereby there may issue any patent, certificate, plat or grant of any lands within the boundaries of said Mercer’s colony, as defined and set forth in the said bill of complaint and exhibits therewith filed, and as set forth in the copy of the contract made on the twenty-ninth January, 1844, by and between the Republic of Texas, by Sam Houston, President thereof, and Charles Fenton Mercer, filed herein, whereof the original is on file in the office of the Secretary of State of the State of Texas, and a copy

is on file in the office of the Commissioner of the General Land Office of the State of Texas, except to the complainant, William Preston, until the final hearing of the case.'

"The injunction was granted by Judge Woods, then circuit judge, and now on the Supreme Bench of the United States. His opinion delivered at the time will be found in 3 Wood's C. C. Rep., page 351. The demurrer was argued in behalf of the State by Hon. George McCormick, then attorney-general. After this, complainant filed an amended bill December 24, 1879, the main object of which was to compel by mandatory injunction the Commissioner of the General Land Office to issue certificates to lands of equal value to be located by them upon any part of the public domain of the State.

"Some time before this, Judge S. A. Willson, of the Court of Appeals, then associated with W. P. Gaines, Esq., was employed by the Governor to represent the State, and after his employment Peeler & Maxey were also retained. My connection with the case began with the preparation of an amended answer in response to amended bill, which was filed February 2, 1880. Judge Willson had in the meantime given much attention to the matter of evidence, personally visiting, in different parts of the State, old settlers of the colony, and obtaining from them information touching the performance of the contract by Mercer and associates, thus laying the foundation for obtaining testimony that afterwards proved of great value.

"Judge Willson and myself prepared and had printed and distributed from the General Land Office a number of questions which were sent to every person in the State, through whom we thought it likely information material to the suit could be obtained. The replies to these questions were useful guides in taking the depositions of the witnesses for the defense. The testimony being complete on both sides, the case was brought to a final hearing at Austin, January 16, 1882, before his honor, Judge Pardee, the circuit judge.

"For the complainant, the case was argued by Mr. John Mason Brown, of Louisville, Kentucky, and Judge O. S.

West, of Austin; and for the State, by Judge S. A. Willson and myself. The hearing was concluded January 26, 1882, and on that day a final decree was rendered as follows:—

“ ‘ This cause came on to be heard at this term on the twenty-sixth day of January, 1882, and was argued by counsel; and thereupon, upon consideration thereof, it was and now is ordered, adjudged and decreed as follows, namely:

“ ‘ First. That the complainant’s allegations are found to be true and supported by the proof; and that the order and writs of injunction heretofore granted and issued in this cause is hereby made perpetual; and the defendant, W. C. Walsh, commissioner of the general land office of the State of Texas, and all and every his successors in office, and all his clerks, draftsmen, subordinates, agents, servants, and employes, and all officers or agents subordinate to him, the said defendant, or to any of his successors in office, or in any manner under the directions, supervisions, or control of him, or of any of his successors in office, be and hereby is and are restrained, prohibited, and forever enjoined from issuing or delivering, or permitting to be issued or delivered, to any person or persons, or to any corporation, any certificate or certificates, patent or patents, plat or plats, for any land or lands within the boundaries of Mercer’s colony, as set forth in the bill of complaint and the exhibits therewith filed; and from any and all interference with, or infringement of, or upon, the land grant or land reservation known as Mercer’s colony; and from doing, or causing to be done, any act or thing whereby there may issue any patent, certificate, plat, or grant of any land within the boundaries of said Mercer’s colony, as defined and set forth in the bill of complaint and the exhibits filed, and as set forth in the contract made on the twenty-ninth of January, 1844, by and between the Republic of Texas, by Sam Houston, President thereof, and Charles Fenton Mercer, filed herein, whereof the original is on file in the office of the Secretary of State of Texas, and a copy is on file in the office of the commissioner of the general land office of the

State of Texas, except to the complainant, William Preston, as chief agent of the Texas Association, or his successors or assigns, or to such person or persons as he or his successors may in writing direct.

“ ‘And it is further ordered, adjudged, and decreed, that the defendant, William C. Walsh, Commissioner of the General Land Office of the State of Texas, and each and every his successors in office, and all his or their servants, employes, agents, clerks, draftsmen, surveyors, deputies, and subordinates, each and every one be and the same are enjoined, restrained, and prohibited from hindering, obstructing, preventing or delaying the said William Preston, his agents, attorneys, employes, or the successors or assigns of said Preston and their agents, attorneys or employes, in the surveying, selecting, platting, recording, entering or claiming any and all lands lying within the limits and boundaries of the so-called Mercer colony as set forth in the bill of complaint and the exhibits therewith filed; and the said defendant and his successors in office, and his and their agents and subordinates are enjoined from hindering, obstructing, preventing, or delaying the said Preston or his successors or assigns, or the Texas Land Association, from performing and completing and perfecting all and singular the several conditions, duties, obligations, and acts devolving upon the said Preston or said association, under the terms and stipulations of the colonization contract set forth in the bill of complaint in this cause, and in the exhibits filed with the said bill of complaint, *provided*, that this decree and the injunction herein shall not be held nor intended, to affect any lands appropriated or set apart by the act of Congress of the Republic entitled, “An act appropriating certain lands for the establishment of a general system of education,” approved January 26, 1839, and which lands were legally located, surveyed and appropriated for a State university, prior to January 29, 1844, the date of the Mercer colonization contract.

“ ‘And it is further ordered and adjudged that the defendant do pay all the costs herein incurred, the clerk to tax the same and that proper process issue therefor.’ ”

“An elaborate opinion in support of this decree will be found in 10 Federal Reporter, p. 315.

“Immediately after this decree, Judge Willson, whose valuable services, to which I have already referred, contributed to the ultimate success of the defense, having been appointed a judge of the Court of Appeals, ceased his connection with the case, and its management thereafter, until its final decision by the Supreme Court of the United States, fell exclusively upon me, and had defeat instead of success followed, it should, if upon any one, have been visited upon me.

“Immediately after this decree, General Preston caused a notice to be published in the *Austin Statesman*, to the effect that the Mercer colony grant had been fully established, and that all locations, surveys and patents within its limits after January 29, 1844, had been declared invalid. All parties interested, desiring information, were directed by this notice to confer with his attorneys and agents at Austin. The object of this notice is apparent, and I am informed that some persons, to avoid injury and loss, did pay to Preston or his agents money, in order to get their patents from the general land office.

“The effect of this decree will be better understood by reference to a communication from the Hon. W. C. Walsh, commissioner of the land office, addressed to counsel for the State, for the purpose of aiding the advancement of the cause in the Supreme Court of the United States. He says: —

“‘As commissioner of the general land office of the State of Texas, and appellant in the above entitled cause, I desire you to make an effort to have the same advanced at the present term of the Supreme Court. My reason for wishing a more speedy determination of the case than would follow if it takes its course on the docket is, that the decree appealed from embarrasses the administration of the land department of the State government, and operates to the prejudice of a large number of citizens.

“‘Mercer’s colony contains within its limits, as claimed about 4,000,000 acres of land and embraces in whole, the

counties of Navarro, Kaufman, Rockwall and Hill, and in part, the counties of McLennan, Limestone, Freestone, Anderson, Henderson, Van Zandt, Raines, Hunt, Hopkins, Collin, Dallas, Ellis, Johnson, Hood and Somervell, and must have at this time, taking as a basis the United States Census Report for 1880, a population of not less than 131,000.

“ ‘It is very important to the people of this rich and thickly settled section that they should be able to obtain from my office copies of maps, plats, etc., to be used in settling and adjusting the corners and boundaries of their lands. Many of the surveys are old, and the landmarks have passed away, and recourse to records and papers in my office is essential to their re-establishment. Under the injunction perpetuated by the Circuit Court, in its final decree, I am restrained from issuing any patent, certificate, plat or grant of any land within the boundaries of said colony; and notwithstanding repeated requests, I have not only refused to furnish maps or plats or copies thereof, but even to answer interrogatories from the courts of the State, when such interrogatories would require copies of papers or maps or plats of land pertaining to titles within said colony. The effect of all this is to tie up the land office, and practically deny to a considerable portion of the people of the State access to the records of my office, and this too, though their titles may have originated long before the Mercer colony grant, and may have no connection therewith.

“ ‘As I construe the injunction, it also precludes me from giving official information or furnishing maps to county surveyors with reference to county boundaries within said colony and is in many other ways an obstruction to the administration of the affairs of my office. As you are aware, having no personal interest in the matter, being simply an officer of the State, I was unable to give a *supersedeas* bond and William Preston has now a suit pending in the Circuit Court, filed since the appeal was perfected, an application for the appointment of a receiver, to divest me of all control of matters pertaining to said colony. As to whether it is proposed to press this application, I can not say, but this

and such like proceedings afford, it seems to me, an additional reason why, if it be possible, the case should be advanced.'

"Governor Roberts in a communication for the same purpose, says: —

" 'I concur with the Hon. Wm. C. Walsh, commissioner of the general land office of the State of Texas, in the propriety of making an effort to advance the case to which he is appellant in the Supreme Court of the United States. The State, it is true, is not nominally a party to the suit, but the decree appealed from, operates directly upon a State official, and obstructs him in the discharge of important duties in which the State and a large number of citizens are interested. I hope you may be able, in view of the nature of the case and the public interest involved, to secure its speedy determination.'

"And in speaking of this decree of the Supreme Court of the United States, says: 'It is not very easy to see on what principle this decree can be sustained. There is no decree by which the right of plaintiff to any specific land is affirmed nor to any ascertained quantity of land to be located generally.

" 'There is no attempt, as there can be none in this suit to adjust the conflicting rights of the State of Texas, and the plaintiff in this land. There is no attempt to define the number of acres to which the plaintiff is entitled, or what he is yet to do, or what he *may* do, to perfect his right to any land whatever.

" 'And yet without establishing any such right or deciding what plaintiff may yet do to establish a right, the hands of the government are tied absolutely to all the vacant land which belongs to it within the colony limits. Not only are the hands of the government thus tied, but other persons having rights inchoate or vested in those lands, with undisputed claims to patents, to certificates, to surveys perhaps, are all arrested in the precise condition they may be at the time this decree was rendered. The whole land office business and functions of the commissioner within that colony, no matter whose interests are involved, are paralyzed by

this decree. And what is more, they are paralyzed forever ; for the language is that the commissioner and all his clerks, agents, etc., are enjoined *forever* from doing the forbidden acts.'

" Upon consultation it was deemed advisable by Governor Roberts, Hon. W. C. Walsh, commissioner of the land office, and Hon. J. H. McLeary, then attorney-general, to prosecute an appeal from this decree to the Supreme Court of the United States. In the propriety of this action Judge Willson, and my then law partner, Mr. Maxey, and myself concurred. Governor Roberts, representing the State, entered into a written agreement with Peeler & Maxey to prosecute this appeal upon the following terms: Peeler & Maxey were to pay all traveling and other personal expenses, and were to receive in full for services \$2,500 cash, and a similar amount when the case was submitted to the Supreme Court, making the whole fee \$5,000. The State was to pay the costs of suit, etc. The contract is in duplicate, one being in my possession and the other on file in the executive office.

" The third clause of this contract reads: ' Inasmuch as the appeal in said case does not operate as a *supersedeas*, and, pending the appeal, various efforts may be made to enforce the decree in the Circuit Court, it is further agreed that, if steps of importance should be taken in said case, in the said Circuit Court, pending said appeal, such as may not reasonably have been anticipated, and as require considerable labor and attention from counsel, then a fair compensation for such service, to be hereafter agreed upon, is to be allowed and paid by said State.'

" As soon as it was settled that I was to take charge of the case, I at once took steps to perfect the appeal. This being done, I had the transcript, which contained six hundred and eighty-nine pages, made up under my own personal supervision. In addition to this I prepared a history of the case for the use of the State, containing, together with the appendix thereto, two hundred and forty-six pages of printed matter. This was a work of great labor and occupied much of my time. The object of its preparation was to have, in

view of the importance the case had assumed and the extent to which public and private rights were involved, a full and accurate history of everything in relation thereto for the information of the officers and Legislature of the State. The advantage of such a document, in the event of an appeal to the Legislature for relief or for a compromise as was apprehended might be made, led to the publishing of several hundred copies of this document by the State, some of which I suppose still remain in the public archives.

“ For this I neither charged nor expected compensation. The transcript was completed June 8, 1882, and was at once forwarded to Washington, and filed in the Supreme Court, June 26, 1882. After perfecting the appeal in the interest of the State for the defendant, Walsh (Cause No. 863) the complainant, Preston, also perfected and prosecuted an appeal (Cause No. 864) in his own behalf, thus making two cases instead of only one, as was contemplated at the time the contract for fee was made. As already noted in the communication of Commissioner Walsh, he was unable to give a *supersedeas* bond, and the complainant, taking advantage of this, applied to the June term of United States Circuit Court for the appointment of a receiver to collect and take charge of all funds, lands, etc., to which Mercer and associates, or those claiming under them, asserted title under the final decree of the Circuit Court, and generally, for that it was its purpose, to administer the land office so far as the country embraced within the limits of the colony contract was concerned. This application, the effect of which, if granted, would have been most mischievous upon the interests of the State and the people, was pressed in open court by Gen. Preston and Mr. John Mason Brown before Judge Woods. It was resisted by me, and the result of the argument was that Judge Woods then declined to grant the relief, but required the commissioner to put in an answer which I afterwards prepared and filed. Afterward the complainant abandoned, pending the appeal, and in view of the steps which had been taken to advance the case, all further efforts in this direction. This was a matter which occupied much of my time, and for which, under the

third clause of the contract, I am entitled to a reasonable compensation.

“ Seeing the importance of an early decision, I went to Washington in December, 1882, for the purpose of endeavoring to get the Supreme Court to advance the case on its docket. I went by New Orleans on my way to Washington and had a personal conference with Judge Pardee, and succeeded in obtaining from him a communication recommending the advancement of the case. Though not strictly a case which under the rules the Supreme Court would advance, I had the good fortune to obtain an order for its advancement, and for the hearing of the cause in March, 1883. But for this, the case would, in all probability, not have been reached until some time in 1886. I then returned home, and at once began the preparation of my brief, which, together with the appendix, contains two hundred and forty-six pages of printed matter. In addition to my brief proper on the appeal of Commissioner Walsh (Cause No. 863), I was compelled also to prepare a brief of forty-four pages of printed matter for the purpose of meeting the appeal (Cause No. 864) taken by Preston. While I never had much doubt of being able to reverse the decree of the court upon the appeal of Commissioner Walsh, I naturally felt great concern when in addition to this I was called upon to meet the questions raised by Preston on his appeal. That the difference between the two cases may be appreciated, I give the errors as assigned by Walsh on his appeal, and the errors as assigned by Preston on his appeal.

“ The errors assigned by Walsh are as follows: —

“ ‘ 1. The court erred in decreeing under law and proofs that Mercer and associates had so performed the conditions of their contract with the Republic of Texas as to acquire thereunder rights susceptible of judicial cognizance and enforcement.

“ ‘ 2. The court erred in holding that articles of annexation between United States and the Republic of Texas created a trust in favor of Mercer and associates cognizable by said court.

“ ‘ 3. The court erred in not sustaining defendant’s plea of *res adjudicata*.

“ ‘ 4. The court erred in not sustaining defenses of stale demand, laches and acquiescence.

“ ‘ 5. The court erred in holding that complainant had shown such interest in subject-matter of suit and such title in himself as to authorize decree in his favor.

“ ‘ 6. The court erred in not dismissing bill, because in effect a suit against State of Texas.

“ ‘ 7. The court erred in not sustaining defendant’s objections for want of parties.

“ ‘ 8. The final decree, as rendered, is not only contrary to law, but fails to define rights of complainant or duties of defendant, and must prove nugatory so far as real merits of controversy are concerned. Said decree is further erroneous in adjudging cost of suit against defendant Walsh.’

“ The errors assigned by Preston are as follows : —

“ ‘ The Circuit Court declined to give relief to the extent prayed by complainant : —

“ ‘ 1. It refused to grant a mandatory injunction inhibiting the land commissioner’s further refusal to issue certificates and patents for the ascertained quantity of land (1376 sections) under the contract, within the colonial boundaries, or its equivalent in value elsewhere.

“ ‘ 2. It refused a similar mandatory injunction inhibiting his refusal to issue certificates and patents on tender of the contract price, for the alternate 1376 sections within the colonial boundaries, or its equivalent in value elsewhere.

“ ‘ 3. It refused to grant a mandatory injunction, the effect of which would be to permit the location of complainant’s patents and certificates on any vacant and unoccupied lands of Texas, within or without the limits of Mercer colony.

“ ‘ 4. It refused to recognize complainant’s claim as a trust fastened upon the entire public domain and enforceable in equity as against the unappropriated lands.’

“ On behalf of Preston, three printed briefs were filed in

the Supreme Court, one by General Preston, one by Mr. Mason Brown and one by Mr. George Davie, making with the documents thereto appended, 243 pages.

“The two cases were argued orally before the court by Messrs. Brown & Davie for Preston, and by myself in behalf of the State. Owing to the importance of the case, the court declined to hear it without a full bench, and owing to the press of business before the court it was not decided until the ensuing term, on November 19, 1883. The opinion of the court, delivered by Mr. Justice Miller, with whom concurred Chief Justice Wait and Associate Justices Bradley, Wood, Matthews, Gray and Blatchford, and the dissenting opinion of Mr. Justice Harlan, with whom concurred Mr. Justice Field, will be found on 109 United States, page 297. An examination of these opinions will show what the court considered the questions presented upon the two appeals.

“The judgment of the court was that upon the appeal of Walsh the decree of the Circuit Court below be reversed and the case remanded with directions to dismiss the bill which necessarily disposed also of Preston’s appeal. After an attentive examination of the dissenting opinion of Mr. Justice Harlan, taking into consideration the fact that Judges Wood and Pardee had both rendered unfavorable opinions and the former was one of the members of the bench to finally pass upon the case, it can hardly be said that the case was free from difficulty or was not one requiring great labor and involving great professional responsibility.

“As soon as it could be done after the Supreme Court had decided the case, I obtained a mandate from that court and filed it in the United States Circuit Court at Austin, and at the May term of the said last named court I obtained a decree directing, in pursuance of the mandate, the bill to be dismissed and taxing all costs of the suit from its inception against William Preston. A certified copy of this decree I caused to be at once filed with the commissioner of the general land office, and this finally disposing of the case, my connection therewith ceased.

“I submit herewith a copy of the printed report of the case made for the use of the State, a copy of the printed transcript of the case, and copies of the briefs of the cases on both sides, on the two appeals as filed in the Supreme Court of the United States.

“Though I have expended a considerable portion of what I have received out of the fee coming to Mr. Maxey and myself, in going to, returning from and remaining at Washington and practically, from the time the case went to the Supreme Court, until its argument in March, 1883, abandoned all other business so as to give it my best attention I ask nothing further as to the appeal (cause No. 863) of Commissioner Walsh. However disproportioned it may seem, when compared with the magnitude of the interests involved and the consequent labor and responsibility of counsel, I am bound by the contract and make no complaint. I only ask for such reasonable compensation as I may be entitled to for services rendered the State in the matter of the application for the appointment of a receiver and in the matter of Preston's appeal (in cause No. 864). For these services the contract contemplates I shall be paid, and I am prepared to agree with your Excellency, or any other representative of the State, having authority to act in the premises at any time on the amount thereof. If your Excellency has no appropriation which you can apply to my claim, I then trust it will meet your approval for me to inclose copies of this communication to members of the Legislature now in session, upon whose judgment as to what is right I must rely—a judgment which shall be exercised so far as I am concerned free from personal appeals and influences.

“If I have seemed to give special prominence to my own services in the case, it is not from any desire to detract from other counsel, for I cheerfully accord to all high abilities and a faithful discharge of duty, and claim no honor which I do not willingly share with them; but it is because I am presenting my personal claim, it having been understood between Mr. Maxey and myself, after the dissolution of our copartnership, that for services not covered by the

regular fee in which we participated, I should be entitled to the compensation. In conclusion, it is proper for me to say that I have submitted this communication to Gov. Roberts, Hon. W. C. Walsh, Hon. J. H. McLeary, Hon. S. A. Willson, and Col. W. P. Gaines, former law partner of Judge Willson, and to T. S. Maxey, Esq., my former partner, with the request that if I have fallen into any errors or mistakes, they point them out. A reply from from each of these gentlemen will be found herewith.

“Respectfully submitted, A. J. PEELER.”

“GENERAL LAND OFFICE, }
“AUSTIN, TEXAS, January 31, 1885. }

“A. J. Peeler, Esq., Austin, Texas —

“DEAR SIR: I think your communication is in every particular correct.

“Very respectfully, W. C. WALSH.”

“AUSTIN, TEXAS, January, 31, 1885.

“Col. A. J. Peeler, Austin —

“DEAR SIR: I have examined your report of the ‘Mercer Colony Case’ and I believe it to be entirely correct. I do not hesitate to say that the compensation received by you in this case, considering the immense interests at stake, the important questions involved, and your valuable and untiring services to the State, is far below what it should have been, and in my opinion your claim for additional compensation is proper and just.

“Respectfully yours, WM. P. GAINES.”

“AUSTIN, TEXAS, January 31, 1885.

“Col. A. J. Peeler —

“DEAR SIR: I have received printed communication addressed to the Governor relating to your employment and services in the Mercer Colony case in the Federal courts. The claim, though unfounded, was surrounded with a variety of circumstances that gave it a plausible appearance of merit, which required a thorough and laborious investigation into the facts and law of the case, and a competent knowl-

edge of equity and of equity practice in the Federal courts. The suit, as I regard it, was a bold adventure in an effort to enlist the powers of a Federal court of equity to restrain the action of the State government in regard to the land within the large and populous territory of the State, known as Mercer's Colony, and to throw a cloud upon the land grants of the persons who resided within it, so as to force in the end some sort of a legislative compromise similar to that which was effected in the claim of the Peters' Colony contractors. The ability and apparent confidence with which the case was prosecuted, the wide range of the matters involved in it, obscured by the long lapse of time, to which may be added the great uncertainty as to what extent a Federal court of equity might go in its interference with the operations of the State government to reach some compensation for a supposed inchoate equity, together with the very unfavorable decisions of the Federal Circuit Court tending in that direction, made it necessary to give to the case almost constant attention and watchfulness, so as to be able to meet the different positions in the case.

"I know that much of your time was devoted to this case from the time of your employment to the end of it in the Supreme Court. That you was equal to the task is fully shown by your written history and brief of the case, but it is still made more perspicuous in the decision made, and opinion delivered by the Supreme Court of the United States in the case. That opinion shows that the specious and adventitious circumstances attending the case were eliminated, and the baseless foundation of the case made bare to view, which required the court not only to revise the judgment of the Circuit Court, but to order the bill to be dismissed, which put an end to the claim forever.

"O. M. ROBERTS."

"AUSTIN, TEXAS, January 31, 1885.

"*Col. A. J. Peeler, Austin*—

"DEAR COL.: I have examined your report to the Governor in reference to the Mercer Colony case, and it seems to be correct. My own personal services in the matter were

unimportant, having remitted the case entirely to your own management.

“I hope the Governor will appreciate the propriety of your reasonable request in seeking compensation for services not covered by the fee originally paid, and that you will be able without further difficulty in effecting an amicable and satisfactory arrangement as to the amount of the same.

“If I can be of any service in the premises, it will give me pleasure to assist you.

“T. S. MAXEY.”

“SAN ANTONIO, TEXAS, February 1, 1885.

“*Col. J. Peeler, Austin, Texas —*

“MY DEAR FRIEND: Your favor of January 31, just at hand. I have carefully read your printed letter to Governor Ireland dated to-morrow, and cheerfully say that it is a very plain, accurate statement of your connection in the Mercer Colony case. You have not dealt as fully as you might probably have done on the extent of your labors, the unremitting zeal and signal ability with which you managed this case. The State could not have been more ably nor more successfully represented. You ought to be paid according to the contract.

“Yours truly, J. H. McLEARY.”

“AUSTIN, TEXAS, February 2, 1885.

“*Hon. A. J. Peeler, Austin, Texas —*

“DEAR SIR: I have had the pleasure of reading your report to his excellency Governor Ireland of the litigation known as the Mercer Colony case. Having for a time been connected with you in that litigation, I am able to say that the report is not only accurate in its facts, but very liberal in its statements in regard to the services of myself and others. I say truthfully that it is attributable to your great labor and eminent abilities that this important litigation was brought to a successful termination, and at so early a day. I trust your valuable services to the State in this matter will be properly appreciated and liberally compensated, and

knowing as I do the amount of labor and the great loss of time which has been occasioned to you by reason of your faithful attention to the interests of the State, I know that the pay which you have already received is poor compensation indeed, compared with what you deserve, and compared with the benefit which has accrued to the State.

“Very respectfully, SAM A. WILLSON.”

“EXECUTIVE OFFICE, AUSTIN, TEXAS, Feb. 5, 1885.

“*Col. A. J. Peeler, Austin—*

“SIR: I am in receipt of your favor of date 2d inst., with accompanying package. I congratulate you on the early and successful termination of the Mercer Colony case, and, in behalf of the State, thank you for the valuable services rendered by you.

“With reference to your claim for services in collateral suits touching the same matter, I can only say that I know nothing of their value or nature. Nor are there any funds under my control out of which I would be authorized to pay the fees referred to.

“I therefore suggest that you lay your claim before an appropriate committee of one of the Houses for such relief as the Legislature may see proper to authorize.

“I am, sir, very respectfully, your obedient servant,
“JNO. IRELAND.”

In the field of authorship Mr. Peeler is not unknown. His work entitled “Law and Equity as Distinguished and Enforced in the Courts of the United States,” displays great research and has received very high commendation from the bench and bar.

The distinction between law and equity, being a controlling feature in the administration of remedial justice in the courts of the United States, any work must be of value to the profession, which, in a careful and painstaking manner, presents the principles upon which this distinction depends. In this book the author discusses fully and exhaustively common law and equity as recognized and contradistin-

guished in the Constitution and statutes of the United States. He refers to, and extracts from, cases in which the distinction between law and equity is said to be derived from the Constitution. In so far as the distinction is recognized by statute, there is a full discussion of all such statutory provisions.

The author does not pretend to have covered, in detail, the whole field of Federal practice, but has discussed, with the utmost fullness, the relations to each other in the State and Federal courts. Upon the general principles of Federal jurisdiction, and with reference to the jurisdiction of the respective courts of the United States, District, Circuit and Supreme, this treatise is fuller in its discussion of questions arising under the statutes of the United States and determined by the decisions of the courts of the United States than any other existing work.

The author discusses, with the fullest possible reference to authoritative decisions, the source and rules of legal and equitable rights, whether found in State laws, the Constitution of the United States, or in the statute of the United States.

Chief Justice Waite, of the Supreme Court of the United States, says: "I am sure the book will be found to be one of great practical usefulness. The practice which now prevails generally in the States of abolishing the distinction between the actions at law and suits in equity makes it the more important that the profession should have at hand a convenient manual for their use in conducting proceedings in the courts of the United States, where that distinction must be maintained."

Associate Justice Bradley says: "I anticipate pleasure and instruction from its perusal."

Associate Justice Blatchford says: "A separate work on this subject will prove useful, and the care and discrimination you have exercised in your labors will commend your book to the legal profession."

Associate Justice Mathews, after speaking of the great practical importance of the subject, says: "I have looked through the pages of your volume with interest and care,

and feel warranted in saying that you have discussed the subject in the light of judicial decisions with great fullness and learning, and, I believe with reliable results."

Judge West, of the Supreme Court of Texas, after referring to the difficulties of the subject, which in his professional experience he learned to appreciate, says: "There is no treatise or book upon Federal practice, that I am aware of, that occupies the precise place on this subject that yours is designed to fill. The arrangement of the work is logical, and, in your successive departments, the foundation and sources on which the jurisdiction of the Federal courts rest, both as courts of law and equity, are naturally and gradually, in their proper order, unfolded and considered in a most satisfactory manner. I regard the work as one every practitioner in those courts should have constantly by him. You have, in this contribution to the literature of the law, well paid the debt which every lawyer owes to his profession. I can not but believe that the opinion of its great merit that I have here expressed will be very generally indorsed by the bar of the United States."

Besides his legal authorship Mr. Peeler has contributed to the press many articles on questions of general importance. He is the author of the various letters which attracted much attention at the time and which appeared in the *Galveston News* just before the meeting of the Constitutional Convention of 1876, over the signature of "Publius." These letters indicated much research and were designed to influence the public mind in favor of a thoroughly efficient and well paid judiciary. At the request of the State Bar Association he read a paper before that body at Houston, entitled "The right of land owners in Texas to protection against governmental and individual aggression in the use and enjoyment of their property." The "fence-cutting troubles" which suggested the paper, induced its publication throughout the State and intensified the interest with which it was generally received and read.

Mr. Peeler possesses all the qualities of an eminent lawyer and the characteristics of a good man. His predominant

traits are: an acute perception, sound judgment, unswerving integrity and indomitable resolution. His mind is capacious, active and peculiarly practical, is habituated to comprehensive observation and steady reflection, and gathers every feature of fact and principle that forms an ingredient of a legal proposition. His successful management of the subtle and abstruse questions involved in the many important cases in which he has been engaged strikingly exemplify his genius and resources. The confidence reposed in his ability, the expectations engendered by his characteristics, and the professional honors conferred upon him, have met with a responsive fidelity and power which have gained him applause and reputation. In the rounded bulk of professional attainment, moral culture and social accomplishment he has no superior at the Texas bar, and he wears the badges of his merit with dignified meekness and becoming modesty.

WILLIAM M. WALTON.

There are but few men whose lives present a more striking exhibition of the possibilities of energy and determination to attain distinction and success amid difficulties apparently insuperable, than that of the subject of this sketch.

William M. Walton was born at Canton, Mississippi, on the 17th of January, 1832. His early education was confined to the old field schools of the country, and later in his youth, he taught the primary classes in these schools to pay for his own tuition and at the same time labored on a farm during the mornings and evenings and on Saturdays to defray the charges for his board and other expenses. On approaching the age of maturity he obtained employment as a deputy in the office of the circuit clerk of the county, and having saved a portion of his small compensation, he went to Charlottesville, Virginia, and taught in the preparatory school there in order to enable him at the same time to receive instruction in the University of Virginia which he attended during the sessions of 1849 and 1850. Returning to Mississippi in the spring of 1851, he began the study of law in the office of Cothran & George at Carrollton, the latter being at present a United States Senator from that State. In 1852 he was prepared to enter the bar, but being yet a minor he obtained his license in the fall of that year from Vice-Chancellor Dickenson at Carrollton under authority of a special act of the Legislature relieving him of his legal disabilities. In the month of February, 1853, he removed to Texas and located at Austin where he began the practice of his profession and has ever since resided. In 1862 he entered the Confederate army as a private, but was soon afterwards elected

lieutenant, was then promoted to a captaincy and was then elected major of his regiment. He was afterwards offered the command of a regiment of cavalry but declined. At the close of the war he quietly resumed his practice. In 1866 he was elected Attorney-General of the State, but was removed by military authority in 1867, as one of the obstacles in the path of reconstruction, and since then has devoted his energies and aspirations entirely to the practice of his profession which he loves with a devotion of a devotee.

Maj. Walton was married in 1854 to Miss Letitia A. Watkins, of Carroll County, Mississippi, whose qualities of excellence have doubtlessly had a large share in inspiring his efforts and directing his aspirations. His first association in the practice of law was with A. J. Hamilton in 1854, to which F. W. Chandler was afterwards admitted. In 1858 he formed a copartnership with Judge S. G. Sneed, which afterwards included Thomas E. Sneed, and continued until the commencement of the civil war, when the forum was exchanged for the field. After the war he formed a copartnership with W. P. de Normandie, which continued until 1870, when, his partner having retired from the bar, he associated with John A. Green, and in 1875 R. J. Hill was admitted a member of the firm. In 1882 Mr. Green withdrew and settled in San Antonio, and in 1884 N. S. Walton, a son of Maj. Walton, became a member of the firm which now exists under the name of Walton, Hill & Walton.

He is a profound lawyer and a man of superb social qualities. Generosity and magnanimity are prominent features of his character, and he is a true patriot, an upright citizen and a faithful friend; and if it were possible for the author of this work to be blinded by partiality or personal regards as to a true insight into the characters of men whose traits he has studied, Major Walton is one of the few persons whose qualities could enchant his observations. But he is an open-minded, open-hearted and open-handed man, and the seal of his character presents its stamp to all the world; upon which inscribed in

living characters, are the qualities which I have assigned him.

As a lawyer Major Walton has few superiors in the State, and while attorney-general evinced a broad scope of legal view amid the mass of novel and perplexing questions that during that time presented themselves for solution to his discernment and judgment, which characterized him as one of the most eminent of those whose legal counsel has guided the helm of the State. He was a staunch supporter of Governor Throckmorton in his efforts to maintain the rights and dignity of Texas against military usurpation. But all the polished arts of Nestor could not stay the wrath of Achilles, and Major Walton retired from the political scene with the verdict of popular applause.

JACOB WAELDER.

The subject of this sketch is a native of Germany and was born in the town of Weisenheim, in the Rhine Provinces, on the 17th of May, 1820. His father was a jeweler, and at the time of his birth his native town, Weisenhiem, was by conquest a part of the first empire of France, but after the downfall of Napoleon I it formed a part of the Rhine Provinces, and is now consolidated with the German Empire. Jacob had at an early age the advantages of the best schools of his native town and also of an excellent gymnasium, which he attended until he was twelve years old. His father was a man of strong republican sympathies, and, being a great admirer of American institutions, emigrated to this country in 1833, and settled in Pennsylvania. Here his son continued his studies in a good school until he reached his fifteenth year; he was then placed in a printing office and two years afterwards was employed as one of the proof-readers in the Constitutional Convention of Pennsylvania convened in 1837. In 1838 he went to Germany, where he remained over two years and completed his general education. In 1841 he returned to America and established a newspaper at Wilkesbarre, Pennsylvania, of which he was the proprietor and editor; but in 1842 began the study of law at that place in the office of Hon. L. D. Shoemaker, and remained under his supervision until he was prepared for the bar. In 1845 he obtained his license and entered upon the practice of law, but the Mexican War was at that time engaging the attention of the country, and Mr. Waelder, catching the inspiration of military enthusiasm, enlisted in the First Regiment of Pennsylvania volunteers and served throughout that war. He was elected a lieutenant of Company I of that regiment, which having embarked at New Orleans landed

below Vera Cruz with the army of Gen. Scott and participated in the storming of that city and the castle of San Juan d'Ulloa, marched with Scott's army into the interior, was then moved forward first to Jalapa and then to the castle of Perote, from which place six companies of the regiment were ordered to Pueblo, where the army was then concentrating. Lieutenant Waelder was appointed adjutant of the battalion composed of the advancing companies. When Gen. Scott moved upon the valley of Mexico this battalion, with small force of cavalry, was left at Pueblo and maintained the siege of that city against a force of four thousand Mexican troops which were joined by four thousand others under General Santa Anna, after the fall of the City of Mexico, until it was relieved by Gen. Joseph Lane in October, 1847. During the siege he was appointed acting assistant adjutant-general by Gen. Childs of the regular army, commanding the garrison, and was several times mentioned for good conduct in the reports of both that officer and the colonel of his regiment.

At the close of this war he returned to the practice of his profession at Wilkesbarre, and in 1850 was elected district attorney of Luzerne County, Pennsylvania, and also brigade inspector of militia; but the failing health of his wife caused him to seek a home in a milder climate, and resigning these offices, in 1852 he removed to Texas and located in San Antonio, which he made his permanent residence, and where he has attained eminent distinction as a lawyer and accomplished gentleman. In 1855 he was elected a member of the Legislature of Texas and was re-elected the two succeeding terms.

As a legislator he was distinguished for his close and watchful attention of the interest of his constituents, and for the ardor and ability with which he advocated every measure calculated to promote the general welfare of Texas. Since his last term in the Legislature, in 1859, he has never sought any political preferment, but has devoted all his energies to a large law practice acquired and sustained by his integrity, ability and success.

He has always been a thorough Democrat and during the

war was a major in the Confederate army and served first as general enrolling officer, and subsequently as assistant purchasing commissary. In 1875 he was a member of the convention which framed the present Constitution of Texas, and exerted a prominent influence in the formation of that instrument, which ended his political career.

Soon after this war, seeing but little hopes of quietude and the peaceful pursuit of his profession amid the disorganization of reconstruction, Mr. Waelder removed to the city of New York and practiced one year in Wall Street in copartnership with Mr. M. C. Riggs, but returned to San Antonio in February, 1868, and formed a copartnership with Hon. Columbus Upson, who has recently been a member of Congress from that district, and this copartnership still continues.

Mr. Waelder has been twice married. His first marriage was with Miss Lizzie Land, of Wilkesbarre, Pennsylvania, in 1849 — an accomplished lady, who died in 1866; and in 1870 he was married to Mrs. Ada Maverick, formerly Miss Ada Bradley, of San Antonio, and this excellent lady has inspired him with much of that spirit of good cheer and contentment which pervades his social ethics and stimulates his professional exertions.

As a lawyer Mr. Waelder is profound and accurate. He thoroughly comprehends the great principles of law established by the wisdom of ages as the proper measures of right and justice among men, and his sound judgment and indefatigable research enable him to apply these with a masterly hand to the affairs of society. He has been especially successful in the application of new and important features and interpretations in civil cases. His unabating industry and methodical habits lead him to a thorough understanding of his cases, and identifying himself with the interests of his clients in all meritorious suits, he sees but one side of a question — the one that has enlisted his exertions.

Among the most notable cases in which he has been engaged before the Supreme Court are the following: *I. A. & G. W. Paschal et al. v. W. H. Dangerfield et al.*, 37

Texas, 273. This case involved the question of presumptions of grants and the subject of imperfect titles to lands, and the legal *status* of parties between whom partition has been made; that they must sue separately to recover the possession of land which has been partitioned and to perfect their title, and that this principle applies to suits both at law and in equity. *Acklin v. Paschal et al.* 48 Texas, 14; *Myers v. Dittmar, Admr.*, 47 Texas, 373; *Daumhauer v. Devine*, 51 Texas, 480; *French et al. v. Sternberg et al.*, 52 Texas, 92; *Howard v. McKenzie et al.*, 54 Texas, 171; *Horan v. Frank*, 51 Texas, 401 — involving the nature and character of a mechanic's lien. *Loonie v. Frank*, same, 51 Texas, 406; *French et al., v. Grenet*, 57 Texas, 273. *Hector v. Knox*, *Manning v. San Antonio Club*, N. Y. & Texas Land Co. *v. Sanchez*, not yet reported.

Mr. Waelder has been also engaged in a number of important cases in the Circuit Court of the United States — notably the San Antonio and Bexar County bond cases, and is engaged in a case of considerable importance, which is now pending in the Supreme Court of the United States — the case of *Sabanys and wife v. Maverick et al.*, in which he represented the defendants and recovered judgment for them in the Circuit Court. This case involves some of the best business and residence property in San Antonio, comprising eight acres.

The case of *Paschal v. Dangerfield* was in litigation more than twenty-five years, and in the last effort made on motion for a rehearing before the Supreme Court, Judge Waelder, as counsel for the appellants, presented the following observations, in reply to the arguments of the counsel for the appellees, which are of both legal and historical value: —

“ We had hoped, that after twenty-five years of litigation, this case was finally disposed of by the action of this court in reversing the judgment of the court below and dismissing the cause. There was no reason to suppose, that after the full review which the case has had and the principles enunciated in the opinion of the court — an opinion which exhausts the subject and leaves nothing open for discussion,

relative to this and similar titles — an effort would be made to induce the court to reconsider its action and reverse its own judgment.

“The effort is made, however, and while we might well leave the opinion of this court to answer the present argument, we will nevertheless offer some suggestions relative to the ‘new departure,’ which the court is asked to take, and which, if taken, would launch not only this case upon a sea of contest, the end of which can not be foreseen, but would open a source of new litigation in various parts of the State, which has been thought closed by the decision of this case by the present bench, and by the previous decisions of its predecessors.

“The counsel may well say, that he is ‘in opposition to every adjudication of every American court upon this subject.’ He assumes that he is only apparently so, because ‘the law and the reason of the law,’ as understood by him, have not been before the courts for consideration.

“We take a different view of the subject, believing that the very point here raised has been passed upon in previous adjudications. Thus in the case of *Paschal v. Perez*, 7 Texas, 348, the counsel for Perez distinctly announces the proposition, that ‘the grant passed the fee under the laws of Spain;’ and ‘the act of Cordero passed the fee.’ It will be remembered, that the concession in that case emanated from the same military chief and governor of Coahuila, *ad interim* of Texas; was made at the same place and about the same time as the one now under consideration; the language of one is the language of the other, and in both instances the parties to whom the concessions were made, are referred to the same Intendency for confirmation. The counsel of Perez endeavoring to show, that ‘the authority of Cordero is beyond a question;’ refers to various decisions of the Supreme Court of the United States, none of which, although a cursory reading may have misled, sustain the position assumed. Thus in the case of *Delassus v. The United States*, ‘the concession was made in regular form on the 1st of April, 1795, by Zenon Imdean, Lieutenant-Governor of the western part of Illinois, in

which the land lay, BY SPECIAL ORDER of the Baron de Carondelet, Governor-General of the province; given in consequence of a contract entered into by De Luzieres with the government for the supply of lead.' In delivering the opinion of the court, Chief Justice Marshall says, that 'by the royal order of 1774, the power of granting lands, which had been vested in the Intendente by an order of 1768, was revested in the civil and military governors of the provinces, who retained it until 1798.'

" 'The concession is unconditional,' said the court, and it was sustained as title. But while this was done the court clearly points to the change of regulation in 1798, under which a different conclusion would have been arrived at and a different decision made.

" In truth, in all of the cases in which grants made by the government of Spain have been sustained, these grants were made by persons duly authorized and depending on no conditions which had not been performed — they were absolute grants, made by competent authority, and were hence held valid, as they should have been.

" The whole subject is fully reviewed by Mr. Chief Justice Hemphill, in the case of *Paschal v. Perez*, and the conclusion arrived at that the title of Perez was inchoate and imperfect, and that an imperfect title, emanating from a former, and unrecognized by the existing, government, forms no foundation for an action, and can have no standing in a judicial tribunal.

" So in the case of *Menard's Heirs v. Massey*, the Supreme Court of the United States, after reviewing and re-examining the cases previously decided by that court, arrived at precisely the same conclusion, saying: 'From the first act, passed in 1805, Congress has never allowed to these claims (imperfect titles) any standing other than that of mere orders of survey, and promises to give title; and which promises addressed themselves to the sovereign power in its political and legislative capacity, and which must act before the courts of justice could interfere and protect the claims. And so this court has uniformly held.'

" It will be remembered that, in the case last mentioned,

the title presented was one substantially the same as the title presented in this case and that relied upon in *Paschal v. Perez*. And the court held it to be — as this court has held those of *Perez* and *Cubier* — inchoate and imperfect.

“Again, in the language of Chief Justice Hemphill: ‘Was the act of the Governor (*Cordero*) final, or was it under the control of the Intendant, depending for its validity upon its confirmation?’ Under the law then in force, as understood by the court and by *Cordero* himself, it is distinctly enunciated that such titles were not valid without confirmation by the political authorities, and that at that time the power to confer absolute titles or grants to lands was vested in the Intendant.

“We might make further extracts from the same case, but the familiarity of the court with its conclusions and reasoning makes it unnecessary.

“The argument of the appellees’ counsel endeavors to maintain, that after the 24th day of August, 1770 (should be 1774), the political and military Governors of provinces had the right of granting and distributing Royal lands.

“This is probably true, so far as the provinces of Louisiana and West Florida were concerned, but only as to those provinces. At least so it would seem from the communication addressed to the Intendant of Louisiana (*Moralez*) on the 22d of October, 1798, and the royal order addressed to *Gazoso de Lamos*, Governor of Louisiana, on the same day. It was also so regarded by the Supreme Court of the United States in the case of *U. S. v. Moore*, 12 How. 219.

“But it is equally true, that so far as the power had been vested in the Governors, it was recalled by that very order, which reads as follows: —

“‘The King has resolved, for the sake of the better and more exact observance of the eighty-first article of the Royal Ordinance for Intendants of New Spain (not the province of Louisiana alone), that the exclusive faculty of granting lands of every class, shall be restored to the Intendnacy of that province, free from the interference of any other authority in the proceedings as established by law (evidently the Regulations of 1754), consequently the power hitherto

residing in the government to those effects, is abolished and suppressed, being transferred to the Intendancy for the future.' (2 White's Rec. 477, 478.)

"On the same day — October 22, 1798 — a substantial copy of this order was transmitted to Morales, the Intendant, for his guidance. (2 White's Rec. 245.)

"Now, this order refers to the thirty-first article of the regulations of 1754, and is made for its better observance in the province of Louisiana. Hence, it would seem that in that province the article mentioned had never been in force, or that it had been recalled, or had not been observed as it should have been. The article read thus: 'The Intendants shall also be the exclusive judges of the causes and questions that may arise in the district of their provinces, about the sale, composition and grant of royal lands, and of seignior, it being required of their possessors, and of those who pretend to new grants of them, to produce their rights, and institute their claims before the same Intendants,' etc. (2 White's Rec. 69.)

"Again, if the same relaxation of the eighty-first article of the regulations 1754 had occurred in the other provinces of New Spain, then the practice was also 'abolished and suppressed' in such other provinces by the same order of 1798. There is nothing from which relaxation can be inferred, but the order seems intended to correct any abuse or practice in that regard, for it expressly refers to the Intendants of New Spain, and not to him of Louisiana alone, and declares that it is given for the better and more exact observance of the eighty-first article by the Intendants, transferring the power to them for the future.

"It seems that on the 24th of November, 1735, a royal decree was issued, requiring all persons who would enter upon the lands in the provinces, to apply to the king in person (2 White, 62), and that in order to do away with this inconvenience, the ordinance of 1754 was established, by the eighty-first article of which, as we have said before, the power to grant lands was vested in the Intendants of the provinces, which were established by the same ordinance — one of the Intendencies being located at the City of San

Luis Potosi. Then the Intendancy of San Luis Potosi was governed by the ordinance establishing it, and all grants of land within its limits, or confirmations of imperfect titles, must, under those regulations, have emanated from it.

“Regulations, such as those issued by Morales in 1799, may or may not have been made by the Intendant of San Luis Potosi. Whether there were or not, does not appear to be definitely known. We admit, however, that the ordinance of 1754 was binding upon him, and that if a different practice had afterwards prevailed, that ordinance was fully restored and the power to make grants re-vested by the order of 1798. Whether the regulations of 1805, to to which Governor Cordero refers in directing Mrs. Cubier to present her title to the Intendant of San Luis Potosi for confirmation, contains provisions similar to those of Morales, we are not informed, though the only inference that can be drawn from that direction is, that there were such regulations, or, in the language of Chief Justice Hemphill: ‘So far as we are informed of the laws then in force, they were not misunderstood, but correctly interpreted by the Governor. The Intendant, in the language of the ordinance, is the exclusive judge of causes and questions arising about the sale, composition, or grant of lands.’

“We maintain, then, that in Coahuila and Texas, they did not have such regulations as those of Morales. They certainly had those of 1754, which are all-sufficient. That they had no treaties with the United States we freely concede; but that fact rather weakens than strengthens this case.

“Nor is it claimed that the royal order of 1798, the regulations of Morales, or the ordinance of 1754, had any extra-territorial force. The principle we contend for, and which has been established and re-affirmed by this court, and all courts where the same question has arisen, falls within the ordinance, the order and the regulation under it; and, it seems to us, that when the counsel for the appellees concedes, as he does, the legal effect of the action of Morales, he gives up the whole controversy.

“He does the same when he says that he is ‘strongly for-

tified by the universally accepted doctrine, that a public officer exercising certain powers pertaining to his office, is presumed to be possessed of the power until the contrary is shown.' For when he invokes and applies this presumption to the act of Cordero in making the imperfect title to Mrs. Cubier, he must take it with its entire effect, viz.: that the act was done with all the power vested in him and no more. And that power fell very short of making an absolute grant, or passing the fee. This follows as a necessary sequence, without calling to aid that other doctrine, that the officer is presumed to know the extent of his power. Hence, when Cordero made the imperfect grant in question — knowing that he had not the power to make a full grant — he directed his grantee to repair to the Intendant for its confirmation.

“Whatever ceremonies may have been performed by Cordero, or by the alcalde under his orders, in granting such title as he could grant, whether such ceremonies were idle or otherwise, can not affect the character of the title. That can not gain strength by the declaration in the instrument, that as evidence of true possession, Mrs. Cubier was taken by the hand and walked over the two leagues; that she plucked grass, washed earth, etc., etc. Whether any or all of these were actually done or not — although all these things were declared to have been performed in the name of the king, her title would, nevertheless, remain an imperfect one, requiring confirmation, which was never obtained.

“That Mrs. Cubier could have defended her possession against a trespasser, we do not deny. She could have done the same under a *resignardo*, which gives protection to a claimant until a survey can be ordered, or until the title of possession issued by an authorized commission. So she could under a lease; same under a naked possession, though it might not have been lawful at its inception.

“Counsel complains that this is called an *Amparo*. Now, an *Amparo* is given to one in possession, and secures him in that possession; when issued to a claimant, it protects him in his claim. In what is the title, presented in this

case, different? It amounts, at best, to an incipient, inchoate or imperfect title — which is conceded, by the counsel, to be its character — though he makes the concession only for the sake of the argument. But he argues himself into a wrong conclusion. He contends that it would require an act of the sovereignty, assuming the possession, or the manifestation of a desire to do so, while it is held in all the adjudicated cases, that the title remains in the sovereignty of the soil until by some act of the political authorities, they have parted with it.

“ There is one view of this case, which we will present for what it may be worth. Cordero issues the imperfect title to Mrs. Cubier as the Governor of Coahuila, though he represents himself also as Governor *ad interim* of Texas. This might raise a question as to his authority so to represent himself; for it is a historical fact, that Coahuila and Texas were not united until the adoption of the Constitution of 1824.

“ However Texas may have been regarded by the king and people of Spain, there are some scraps of history in connection with its occupation and first settlement, from which it might well be inferred, that the regulations made for the government of Louisiana and Florida would be more applicable to Texas than any of the other Spanish provinces now constituting Mexico.

“ Thus, for instance, the first European visitors to the shores of Texas were a colony of French emigrants led by La Salle, who landed in Matagorda Bay, and erected a fort (Fort St. Louis) on the La Vaca. He was murdered in 1687. In 1689 Capt. De Leon, a Spanish officer, was dispatched to the La Vaca to hunt out the French. In 1691 a Spanish Governor of the region was appointed, but in 1693, owing to the hostility of the Indians and other causes, the settlement was abandoned. The Spaniards at that time had settlements at El Paso and at San Juan Bautista, both on the right bank of the Rio Grande, but both now within the limits of Texas. In 1714 the French again attempted a settlement within its limits, and Crozat, to whom Louis XIV. had granted the whole of Louisiana, sent an expe-

dition, which penetrated from the Sabine to the Rio Grande.

“ Efforts were made by both France and Spain, with varied success, to hold the territory, until in 1763 the feud was finally terminated by the cession of Louisiana by France to Spain. When, in 1803, Spain re-ceded Louisiana to France, the latter ceded it to the United States, and ‘as there had been no well defined boundary between Louisiana and the Spanish possessions west of it, a controversy at once ensued between Spain and the United States,’ the latter claiming to the Rio Grande. This controversy continued until 1819, when in the treaty for the cession of Florida the country west of the Sabine was guaranteed to Spain. How distasteful this treaty was to the people of the Western and Southern States of the Union, is shown by subsequent history — by the invasion gotten up in those States.

“ It will be remembered that this claim of the United States to the Rio Grande was much discussed about the beginning and during the war with Mexico, and one of the reasons why the annexation of Texas was justified — or rather advocated — was that Texas in reality was a portion of Louisiana.

From this part of our early history, it appears that Spain herself did not obtain a clear, undisputed title to the Territory of Texas until its cession of Florida in 1816. And from this it may also be inferred, that although Spain nominally or really valued the Province it did so in connection with its possession of Louisiana, and after the cession of the latter, with Florida, until finally its claim to Texas was confirmed, its title acknowledged, and the Province was united with Coahuila in 1824, as before stated.

“ If that part of our history leads to the inference we suggest, then the regulations of 1798 were clearly applicable to Texas. If, on the other hand, our inference should be thought to be incorrect, the royal regulations of 1754, and all that has been said in relation to that part of the case, necessarily lead us to the same conclusion: that the title of Mrs. Cubier was imperfect, and as such can have no standing in a judicial tribunal; that it was never confirmed,

as the law of the time required, and that, therefore, no recovery can be had under it.

“ While we may, and do, give due credit to the ingenious and able argument of the counsel, and while we appreciate his diffidence in asking the court to take the ‘ new departure ’ heretofore alluded to, we must insist that we have failed to discover any good reason why the change desired should be made.

“ Believing that the court will adhere to its decision we deem it unnecessary — perhaps improper — to say anything in regard to the ‘ other bill of exceptions ’ alluded to by the counsel for the appellees.

“ In relation to the defendants who have not appealed, we will simply say — lest it might be thought there was slight error in the judgment of this court — that the defendants, against whom the judgment of the District Court was rendered, were Geo. W. Paschal, the estate of I. A. Paschal, and Gideon Lee. These have all appealed. There were several other defendants — settlers on the land — against whom there was no judgment, but a judgment in their favor, upon the plea of the statute of limitations. These, of course, did not appeal. And as the cause is dismissed and they can not be troubled again by new litigation, there is no reason why the judgment should be changed as to them.”

A. W. TERRELL.

Alexander Watkins Terrell, one of the most gifted lawyers of the Texas bar, was born in Patrick County, Virginia, on the 3d of November, 1829. His father, Christopher Joseph Terrell, a descendant of an old English family, was also a native of Virginia, and was a distinguished physician. His mother was a daughter of Joseph Kennedy, of Augusta County, Virginia, and was of German ancestry. In 1832 the family immigrated to Cooper County, Missouri, where the subject of this sketch was reared and received his primary education. He completed a thorough course of studies in the University of Missouri, and in 1847 began the study of law at Boonville, in the office of Judge Peyton R. Hayden, one of the most eminent jurists in the State.

He was admitted to the bar in 1849, and began the practice of law at St. Joseph, where he pursued his profession with distinguished success and rising reputation until the year 1852, when his genius and ambition seeking the most ample field and satisfied with nothing but the most inviting possibilities, he removed to Austin, Texas, the destined seat of a great empire, which spread before him its unbounded scope of enterprise and its spacious lap of wealth and prosperity. At Austin he immediately entered upon a brilliant career which has been interrupted only by the disorganizing throes of revolution and the absorbing energies of civil war. In 1857 he was elected judge of the Second Judicial District, and in consequence of the trammels of a judicial office, though a strong Southerner in soul and sentiment, he took no active part in the immediate political measures which accomplished secession and precipitated the war. In 1863, at the expiration of his term of office, he entered

the Confederate army as lieutenant-colonel of the Thirty-fourth Regiment of Texas cavalry, but was soon afterwards promoted to the rank of colonel, and commanded that regiment until near the close of the war. He led his command in the battles of Mansfield, Pleasant Hill, Jenkins' Ferry, and other engagements during the campaign against General Banks. He was a most efficient officer, and in 1865 was promoted by General E. Kirby Smith to the rank of brigadier-general and was in command of a brigade at the termination of hostilities.

When the war ceased he settled at Houston and resumed the practice of law; but in 1867 retired to his plantation in Robinson County, and during several years devoted his attention to his planting interests. In 1871 he returned to Austin, and has since that time devoted himself to his profession and to the duties of a legislator and reporter of the Supreme Court.

In 1875 he was a member of the State Senate, and was distinguished for his zealous and able efforts to purge the laws of Texas of the degrading features introduced during the reconstruction regime, and to purify the jurisprudence of the State. With this view, his first act was to effect a radical improvement in the jury system, by requiring of jurors in both civil and criminal cases, the qualification of being able to read and write. This law, which is still in force in Texas, has greatly curtailed the evil of professional jurors, closed the avenues of corruption which converged upon the jury rooms, and clothed the attainment of justice, at least with the purity of intelligence; and it would be well for the best interest of society if all the other States of the South were to follow the example. He was again a member of the Senate in 1879, and was efficient in procuring the adoption of provisions for the erection of the new capital.

In conjunction with his partner, Judge A. S. Walker, he reported thirteen volumes of the decisions of the Supreme Court of Texas—from the thirty-eighth to the fifty-first volume inclusive, and has since then reported individually eleven volumes, including the fifty-second and sixty-second volumes. He is at present chiefly engaged in the duties of State Reporter.

Judge Terrell is a lawyer of fine ability, and in intellectual capacity and literary attainment has no superior at the Texas bar. He is a fluent speaker, and his culture extends to all the departments of science. His analysis of the decisions of the Supreme Court indicates scholarly ingenuity and professional excellence, and his legal and legislative accomplishments have adorned the jurisprudence of the State. His speech on private corporations, delivered before the literary societies of the University of Missouri in June, 1885, presents an interesting exposition of the history, character and tendencies of these legalized aggregations of wealth and power—that they demoralize their owners, breed public corruption, and are inimical to independent labor and a free ballot. While the discussion of these characteristics of private corporations has been hackneyed by law writers, politicians and writers on political economy, Judge Terrell has clothed them with an application to the present state of society which has attracted public attention and should excite public interest—not that interest which is expressed in a hostility to the existence of institutions which have developed the country, rescued Texas from being the refuge and hiding place of every desperado and criminal that could escape from the older States, and planted a village in every inviting valley, and a home on every productive hillside; but that interest which awakens and asserts individual rights, and a watchful guard against any real tendencies which may threaten their detriment. This done, and politics will be found to be the only influence that can endanger the liberties of a free and intelligent people.

GEORGE GOLDTHWAITE.

The subject of this sketch was born in Spartansburg district, South Carolina, on the 27th of May, 1830. His father, Robert H. Goldthwaite, was a native of Massachusetts, but removed to South Carolina at an early age and became an able lawyer at the bar of that State. In the latter part of his life he retired from the practice and devoted himself to the duties of a planter, on a farm in Montgomery County, Alabama. Here George Goldthwaite was reared until he was fourteen years of age, and at the death of his father which occurred about this period, the family being in reduced circumstances, he found himself thrown upon his own resources and dependent upon his own exertions to obtain an education.

But undaunted by his prospects and the difficulties which surrounded him and armed with an unswerving determination he sought the first avenue which presented to him the path of independence and success, and in 1844 entered upon the duties of a clerk in a mercantile house in the city of Montgomery. He pursued this occupation, devoting his leisure hours to miscellaneous reading and to the study of law until the year 1853, when he immigrated to Texas and located at Houston, when he again entered a mercantile house as book-keeper, and served in this capacity four years, continuing in the meantime to read law as the duties of his position afforded him opportunity. During this time he was married to Miss Louisa Stone, daughter of a Presbyterian minister, and gained the inspiration and encouragement of an accomplished and noble companion in his efforts to obtain a place and a name among men. In 1858 he was admitted to the bar and spent several months traveling through the State in search of a promising location

for the pursuit of his profession, but finally returned to Houston, where he began his practice and continues to reside.

As a lawyer Mr. Goldthwaite occupies an eminent position at the bar of Texas — a place fully commensurate with the hopes and aspirations of his youth. Trained from his early youth in the school of self-reliance his virtues were shaped by the mould of circumspection and invigorated by the demands of necessity. His early life was stamped with a fixed purpose and his ambition inspired indefatigable effort. With a strong and resolute hand he tore away the obstacles that lay in his path and pushed onward to a noble destiny. Devoted to the duties of his profession, he has never held or sought political or military preferment, though he has always been a thorough Democrat, and deeply imbued with the views and sentiments which dictated the policy of the Southern people in their efforts to free themselves from the hostile and aggressive elements of the Northern portion of the Union.

After the war Mr. Goldthwaite resumed the practice of law at Houston. He had before that time been employed as the regular attorney for the Texas Central Railroad Company, and has since then devoted himself chiefly to its service. He has, therefore, been engaged in many of the most important railroad cases that have come before the courts of the State, in which he has been remarkably successful, and is considered one of the best corporation lawyers in the country.

He is a man of staunch integrity, of conscientious purpose and ardent convictions, and his talent, energy and perseverance have gained him the reputation of being one of the most invincible practitioners at the Texas bar.



Nicholas William Battle.

N. W. BATTLE.

Nicholas William Battle was born in Warren County, Georgia, on the 1st day of January, 1820. His father was a Methodist clergyman of reputation, who removed to Georgia, when a young man, from Nash County, North Carolina, where his ancestors, who were of French origin, settled prior to the war of the Revolution, one of whom was captain of a company in the Continental army. The subject of this sketch enjoyed liberal advantages in the best country schools of Monroe County, Georgia, in which he was reared, and in 1842 graduated at William and Mary College, in Virginia, where he also took the course of law. Returning to Georgia he continued his legal studies under the supervision of Judge A. M. Spae, an able jurist, and in 1844 was admitted to the bar at Macon, and entered upon his practice at Forsyth. He soon attained an enviable position at the bar, which increased his aspirations and stimulated his ambition for professional achievements. The prospects of Texas charmed his view, and in 1850 he removed to Waco, which has ever since been his home.

The Texas courts thronged with litigation of land matters, and criminal cases arising from a spirit of speculation and the heterogeneous society of a new and rapidly populating country, afforded him an ample field, and he soon acquired a large practice, and stepped into the line of professional promotion. In 1854 he was elected district attorney, and was re-elected in 1856. In 1858 he was elected judge of the district, but resigned his position in 1862 and entered the Confederate army as lieutenant-colonel of the Thirtieth Regiment of Texas cavalry, and served in the field during the remaining period of the war. He was an excellent disciplinarian and a gallant officer who

enjoyed the highest respect of his superiors and invoked on more than one occasion their complimentary official notice.

At the close of the war Judge Battle returned to Waco and resumed his practice. He had always been a State's rights Democrat of the straightest school, a strict constructionist of the Constitution, and a nullifier, and while in the main he adhered to his old Democratic faith, he promptly accepted the arbitration of the sword and the new features which it had wrought upon the constitution. He gave up the old Federal Union with the reserved rights of the States, and accepted the permanent supremacy of the national government with its consolidated power, which he deemed revolutionary to attempt to evade.

In 1874 he was appointed by that excellent judge of official competency and merit, Governor Coke, judge of the criminal district comprising the jurisdictions of Waco, Marlin and Calvert, which expired on the adoption of the Constitution of 1876. In this capacity he was highly efficient in enforcing order and suppressing crime in the midst of an abnormal lawlessness arising from the unsettled state of society during that period. It is said that during the time of his incumbency of the district bench combinations existed in some of the counties composing his district of a character which threatened to overawe the court and thwart the course of justice, and that he met the threats and menaces of mob law with as much stern defiance and indignation as did Lord Mansfield when, in response to similar efforts to control his opinion in the case of *Rex v. Wilkes*, that great judge took occasion to make the following illustrious observations from the bench: —

“ I pass over the many anonymous letters I have received. Those in print are public, and some of them have been brought judicially before the court. Whoever the writers are they take the wrong way. I will do my duty unawed. What am I to fear? What *mendax infamia* from the press which daily coins *false facts* and *false motives*. The lies of *calumny* carry no terror for me. I trust that my temper of mind, and the color and conduct of my life, have given

me a suit of armor against *these* arrows. If during this king's reign, I ever supported his government and assisted his measures, I have done it without any other reward than the consciousness of doing what I thought *right*. If I have ever opposed them, I have done it upon the points themselves, without mixing in *party* or *faction*, and without any collateral views. I honor the king and respect the people ; but many things acquired by the *favor* of *either*, are, in my account, objects *not worth ambition*. I wish POPULARITY, but it is *that* popularity which follows, not that which is run after. It is that popularity which, sooner or later, never fails to do justice to the pursuit of *noble ends* by *noble means*. I will not *do* that which *conscience* tells me is *wrong*, upon this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press. I will not *avoid* doing what I *think* is *right*, though it should draw on me the whole artillery of libels, all that falsehood and malice can invent, or the credulity of a deluded populace can swallow. I can say with a great magistrate, upon an occasion and under circumstances not unlike, '*ego hoc animo semper fui, ut invidiam virtute partam gloriam, non invidiam, putarem.*' The last end that can come to any man never comes too soon, if he falls in support of the *law* and *liberty* of his country, for liberty is synonymous to law and government."

"They, the leaders of mobocracy," said Judge Battle, "they would make a Jeffries of me ! They would transform the courts of a peaceful State into the bloody assizes of two centuries ago. But I defy their threats on the one hand and scorn their blandishments on the other, as I despise the cowards who do their beck and bidding !"

In spite of every obstacle and adverse influence he followed the track of the law with unswerving steps, left to his successor an unspotted ermine and resumed the practice of his profession without means and with a briefless docket ; but the same energy, perseverance and principles of integrity which had gained him distinction as an advocate and eminence as a judge soon restored his practice and

crowned his career with additional success, and his reputation as a lawyer continues in a brilliant ascendancy.

While on the bench Judge Battle decided many important and interesting questions, one of which was the novel issue that a free negro could not under the laws of Texas contract for the sale of himself into slavery, and that all such contracts were *ab initio* null and void. This opinion was affirmed by the Supreme Court in *Westbrook v. The State*, reported in 24 Texas, 563. He has also been engaged as counsel in some of the most important cases that have come before the courts, notably that of *Spurlock v. Sullivan*, 36 Texas, 511, in which are discussed the rights of intervenors and the question of equitable intervention, and the unreported case of *Hough v. Barret*, involving the title to three leagues of land in the Brazos valley, which pended nineteen years in the District Court and which he finally gained.

Judge Battle was married in 1846 to Miss Mary Ann Cabaniss, daughter of Hon. E. G. Cabaniss, an eminent jurist of Georgia, who was elected to Congress soon after the surrender, but was with the other Southern members refused his seat, in view of the new and arbitrary system of reconstruction which Congress had at that time determined upon. To the noble qualities and superior accomplishments of this lady he attributes largely his professional eminence and success in life.

While it can not be said that Judge Battle is endowed with any extraordinary gifts or special brilliancy of genius, he possesses in a high degree the qualities indispensable to the attainment of eminence in any sphere of life, and without which genius is a delusive and oftentimes an unfortunate possession. He possesses a capacity for cautious, painstaking and indefatigable labor, which, guided by intellectual vigor, a sound judgment and a conscientious purpose, always dives to the depth of investigation, and never fails to bring up the gems of truth and justice from its bottom. Hence his briefs are always searching and well argued. As a judge he was noted for promptness and precision, his

plain, earnest and cogent style of oratory, which makes him formidable as an advocate before a jury, gave to his charges and decisions upon the bench a clearness of reason and directness of force which always met with a comprehending response and concurrence in the mind of common sense and conscientious conviction, while his personal amiability and suavity of manner lenified the sternness of the judge.

Judge Battle is a Baptist in his communion, but is one of that better class of denominational sectarians who holds the faith with all Christians "in unity of spirit," and in the bonds of fellowship.

MARCUS D. HERRING.

The subject of this sketch was born in Holmes County, Mississippi, on the 11th of October, 1828. His early associations were chiefly with the Choctaw Indians who were devoted friends to his father and, with the exception of two or three white families, were his only neighbors. In 1836 his father moved to Carrollton and was the first circuit court clerk of Carroll County. He held this position for many years and afterwards served several terms in the Legislature of Mississippi, the House of Representatives and in the Senate. M. D. Herring began his education in the office with his father, in which he early learned the clerical business of the courts and was inspired with the ambition to become a successful lawyer. In 1840, when but twelve years of age, he witnessed the proceedings of an important and exciting criminal trial, which quickened his aspirations and he determined to apply himself at once to preparation for the bar, and from that time to the present has devoted all his energies and talents to his chosen profession, in which success has been the sole aim of his ambition. His father was equally desirous that he should be a physician, and offered him the most flattering inducements to adopt the study of medicine; but he was a boy of self-will and resolution, and nothing could induce him to swerve from his determination, or mar the prospects which he pictured for himself at the bar; and he argued his convictions so earnestly that his father finally yielded to his desires, and placed him at school at Judson Institute in Carroll County, under the tuition of Reuben Nason, a friend and classmate of Sergeant S. Prentiss, and who came with him to Mississippi. In 1845, he entered the junior class in Centenary College, at Jackson, Louisiana, and was prepared to graduate in



M. D. Herring

1847; but a majority of his class having been thrown back one year, the minority, of which he was one, through sympathy for their fellow-classmates, declined graduation. During the last year of his collegiate course he read law under the president of the college, David O. Shattuck, formerly a distinguished judge in Mississippi.

On leaving college, and finding his means exhausted, he returned to Carroll County and taught school to enable him to continue the study of law and acquire a thorough preparation for the bar. In 1848 he was admitted to the practice of his profession at Carrollton, receiving his license from Chancellor Cocke, and soon afterwards removed to Shreveport, Louisiana, where after fitting up a law office in the most meagre and primitive style, he had but five dollars remaining, and no friend or acquaintance in the city. In this condition, the proprietor of the hotel at which he was boarding demanded that he should pay a month's board in advance. With these terms he could not comply, but the landlord was inexorable, and giving him his last five dollars which settled his bill to that date, with feelings of indignation and without his dinner, he started in search of more generous quarters. On crossing the street he met a physician, who occupied an adjoining office, and told him of his situation and the circumstances that had befallen him. The kind doctor became at once interested in the young stranger and escorted him to a boarding-house kept by a sister of the famous James Bowie, between which and the hotel existed a strong and avowed rivalry. He told her of his poverty-stricken condition and of his treatment by the hotel-keeper. She was both amused and pleased by his narrative of the circumstances and received him as a boarder on trust; but the next week, through the kindness of Col. Thomas S. Land, who had served in the Legislature of Mississippi with his father, and who was subsequently one of the judges of the Supreme Court of Louisiana, he received a retaining fee of seventy-five dollars, which he immediately paid to his generous and noble-hearted landlady as the first installment for his board. Col. Land continued to interest

himself in his welfare and afterwards admitted him to co-partnership.

In the fall of 1850, Mr. Herring's health having failed at Shreveport, he started on horseback to Cameron, Texas, in search of a new and more salubrious locality, and during his journey one of those circumstances occurred which, though slight and apparently without indicative importance, often changes the tide in the affairs of men and fixes human destiny. While passing through Shelby County his horse fell through a bridge, causing him a serious injury which delayed him some time at Shelbyville; and during his confinement at that place some persons who had been arrested upon the charge of murder were brought to his hotel. He accepted a retainer for their defense at the examining trial, and engaged to defend them at the ensuing term of the District Court. This circumstance caused him to locate at Shelbyville, where he practiced until the spring of 1854, when he settled at Waco, which has since then been his permanent home. While at Shelbyville he extended his practice throughout the old Fifth District, which at that time contained some of the most eminent lawyers the Texas bar has ever produced, and he often met as assisting or opposing counsel J. Pinckney Henderson, O. M. Roberts, Wm. B. Ochiltree, Thomas J. Rusk, Thomas J. Jennings, Richard S. Walker and other lawyers of distinction. This field would have been a severe and exacting test of any quality of genius, but Mr. Herring was equal to the demands which the conditions of success made upon him, he stemmed the tide of talent that swept around him and gradually rose to distinction.

When the Civil War began in 1861 he enlisted as a private soldier in one of the first volunteer companies raised in Texas for the Confederate service. He was soon afterwards elected captain and served three years and nine months in the field, chiefly in the Trans-Mississippi department. At the close of the war he quietly but vigorously resumed his practice at Waco, which he has since extended to all parts of the State, particularly in land litigation and

criminal cases, in which he has been peculiarly successful. In 1854 he was employed on the part of the defendants in the celebrated suit of *Lasseley v. Eliphas et al.*, in the United States District Court at Austin. In consequence of the interestedness of the presiding judge, John C. Watrous, the venue was changed to New Orleans where the case was argued by Mr. Herring, as leading counsel, before Judges Campbell and McCaleb. The plaintiffs obtained judgment, and an appeal was taken to the Supreme Court of the United States in which, upon bills of exceptions prepared by Mr. Herring, it was argued by Mr. Judah P. Benjamin. This case is reported in 20 Howard, 264, and it is evident that, while Mr. Benjamin was a great civil law and commercial lawyer, he knew nothing of the peculiar system of Texas land laws and did not fully comprehend the character of the exceptions; and had Mr. Herring who had fought the suit from its inception been employed at Washington the study of the features of the case suggests the probability of a different result.

He has been employed generally for the defense in many important and exciting criminal trials. Soon after the war he prosecuted Colonel Meyers, his son David and Wash. Handy for the murder of William Milican at Bryan. The case hinged upon the evidence of a son and brother, Allen Meyers, whose testimony in chief acquitted the defendants, but upon a searching cross-examination by Mr. Herring they were convicted. This was the first conviction for murder that had ever been effected in Brazos County. Afterwards John Milican, brother of William, killed Meyers, and before he could be tried he was killed at night in the streets of Milican. Mrs. Balldridge, a daughter of Meyers, and his son, a lad of thirteen years, were indicted for Milican's murder and were vigorously prosecuted by Colonel Hutchinson, of Houston, and other able lawyers, but Mr. Herring effected their acquittal. Early one Sunday morning in the spring of 1870, Eugene Carter, a bright boy of fourteen years, and step-son of General Thomas Harrison, was found murdered in his bed in a store-house in Waco, in which he was employed. There was a light burning in his

room, and it was evident that it was the work of a burglar. There was no evidence to identify the murderer, but the whole country was upon the alert for the least suspicion, and about three years afterwards a man named Hunnicutt was arrested in Hill County and charged with the crime. He was stationed at Waco as the captain of Governor Davis' police at the time of the deed, and as circumstances somewhat pointed to him, public opinion was pronounced as to his guilt. The trial lasted eleven days and a verdict of guilty was rendered against the prisoner; but there was great conflict in the testimony and a new trial was granted. When this took place Mr. Herring, who did not believe the man guilty, spoke an entire day in his defense. He was acquitted and his innocence was afterwards universally conceded.

Among the most important reported criminal cases in which Mr. Herring was leading counsel for the defense are *James v. The State*, 3 Court of Appeals, 437, and *Simms v. The State*, 10 Court of Appeals, 132. Those parties were twice convicted of murder, and both finally acquitted, chiefly through his strenuous exertions in their behalf.

While Mr. Herring has been highly successful, and has acquired a handsome competency by his practice, he values his reputation far above all his other successes, which is to him a source of pleasure and pride as well as profit. He is a kind-hearted, generous and sympathetic man, and seems to value his attainments and influence chiefly for the opportunities they afford him for doing good. He is consequently held in high esteem by his neighbors, as well as by his brother members of the bar. Hon. D. A. Kelley, an old acquaintance of Mr. Herring, says of him: "He has always borne the reputation of a successful lawyer, equally qualified in every department of the profession; whether in the civil or criminal sphere, whether in the office or forum, whether in court or out of court, he stands in the front rank of his profession as an able and experienced lawyer.

"He is possessed of wonderful energy, perseverance and will power, working day and night in the cause which he has espoused, and has frequently been the means of uprooting and overturning a strong current of adverse public opinion

and set it coursing in the opposite direction. His energy never flags, and no adverse circumstance, no matter how forbidding or apparently discouraging, seems ever to break his aim or thwart his purpose. He pursues his conceived duty with all the ardor of a devotee, equally regardless of opposition, whether fostered by public or private opinion.

“He is a speaker of considerable magnetic power, and always has something good to say, which he clothes in chaste, forcible and flowing language, and is equally entertaining in private as a conversationalist as he is in public as a speaker.

“He has a heart full of sympathy and charity, always ready to encourage those who are afflicted or in distress, and always listens with patience and credulity to the story of those who have been wronged or who have encountered misfortune; so much so that he has often suffered pecuniarily at the hands of the deceitful and unworthy.

“No widow or orphan ever applied to him without relief and no poor person was ever turned away because of his inability to secure a cash retainer. He has often defended persons charged with crime without the hope of reward, having been imbued and impressed with the story of their innocence.”

In addition to these sterling personal qualities he possesses mental traits peculiarly adapted to the requirements of his profession, which he has cultivated by systematic training and close application. He possesses an inquisitive and highly analytical mind and keen powers of perception, which penetrate the depth of every question of law or fact that engages his attention. He is consequently always prepared for any turn which a case may take, and therefore fortified against surprise or novel development.

He was married at Waco in 1856 to Miss Alice G. Douglass, a lady of culture and the most amiable qualities, who has been to him a faithful helpmate in promoting his aspirations and encouraging his endeavors. He is a zealous member of the Baptist Church, and an enthusiastic Mason, and one of the pioneers of the Odd Fellows' fraternity in Waco, in which order he has held the highest honors in the State.

CHARLES STEWART.

Charles Stewart is a native of the State of Tennessee, and was born in the city of Memphis, on the 30th of May, 1836. His father, who was of Scotch origin, was a native of Culpeper County, Virginia, and was by trade a house carpenter; but he was a man of great intelligence, remarkable especially for his knowledge of political history, and being a forcible and fluent speaker, was often engaged in discussing the political questions of his day, especially in advocacy of the doctrines of the Whig party, of which he was an ardent supporter.

Charles Stewart came to Texas with his father, who settled in Galveston in 1845. His educational opportunities were only such as were afforded by a private school in the country; but he was early inspired with a desire and determination to promote his condition in life, and having inherited in a marked degree the natural gifts of his father in fluency of oratory and fondness of discussion, he directed his aspirations towards the former.

In 1852 he began the study of law in the office of James W. Henderson, and completed his preparation for the bar under the supervision of Messrs. Ballinger & Jones, of Galveston. In 1854, when not yet eighteen years of age, he was licensed by the Supreme Court and began the practice of his profession at Marlin, where he soon attained a high stand at the bar, and such a degree of popular esteem and confidence, that, in 1856, he was elected district attorney of the Thirteenth Judicial District, and was re-elected in 1858, as a just recognition of his efficiency.

While devoting all his energies to the duties of his profession and official station, Mr. Stewart was a staunch advocate of Southern views in regard to the questions which

agitated the public mind at that period, and was a member of the convention of 1861, in which he voted for the ordinance that withdrew Texas from the Federal Union, and sealed the rectitude of his intentions and conscientious views by a prompt personal acceptance of the gage of battle. He served faithfully during the war, first in the Tenth Regiment of Texas infantry, and afterwards in Baylor's Regiment of cavalry, and at its close as promptly accepted the inevitable attributes of the issue, and without remorse resumed the duties of his profession.

In 1866 he removed to Houston, where he has since resided, and of which he was, in 1874, elected city attorney. He was chosen to represent that district in the State Senate in the Sixteenth and Seventeenth Legislatures, and distinguished himself by his strenuous and able efforts in the interest of free public education. In 1882 he was elected to the Forty-eighth Congress, and was re-elected to the Forty-ninth Congress in 1884, of which he is now a brilliant and rising member. His report from the Committee on Foreign Affairs, in the House of Representatives of the Forty-eighth Congress, in regard to commercial relations with South and Central America is an able document, and in the light of subsequent and present events highly important and interesting. Having submitted a substitute bill embodying the views of his committee as to the most practical method of promoting their relations, Mr. Stewart presented in his report an exhaustive statistical exhibit of the value of the commerce of these countries, and its unequal distribution between the United States and other countries, and having referred to the statements of intelligent travelers that, "from the little pin with which the lady fastens her ribbons to the grand piano with which she enlivens and enchants the hearts of her household; from the tiniest thread and tack, and tools needed in the mechanical arts, to the largest plows and harrows, and other agricultural implements and machines required on the farm; the wares and fabrics, light groceries and delicacies in common demand; the drugs and medicines in the shops of the apothecaries; the liquors and wines of the saloons; the stationery and

fancy goods of the book stores ; the furniture in the parlors and the utensils used in the kitchens, are in these countries, with rare exceptions, of English, German, Spanish, or Italian manufacture, and yet inferior to the corresponding articles of American make." His report proceeds: —

"This condition of things ought to be changed at the earliest possible moment ; and there should be no balance of trade against us in our commerce with these countries, and in order to effect such a change in our commercial relations with Central and South America, the committee earnestly recommends the adoption of the substitute herewith reported, believing that it will serve to initiate such policies as will be of great advantage, not only to the people of this country, but to the inhabitants of Central and South America.

"Our commercial relations with Mexico are satisfactory. From the tabular statement herein given it appears that the foreign commerce of Mexico, both exports and imports, amounted in the aggregate during the past year to the sum of \$58,125,000, and that nearly one-half of this commerce was done with the United States. It also appears that for the year ending June 30, 1883, that with Mexico there was a balance of trade in our favor amounting \$7,021,000. Our proximity to Mexico has had much to do with building up our commerce with that country ; but much more is due to the liberal and progressive spirit with which the Mexican government has been actuated in encouraging and protecting the investments of American capital.

"Already American enterprise is actually engaged in constructing railways in Mexico, and to-day one may go from New York, all the way by rail, to the city of the Montezumas. The construction of these roads has infused new life and energy into Mexico, and her rapid increase in wealth and material prosperity is assured. But Mexico reaps not all the benefits resulting from these investments of American capital, for our commerce with that country has greatly increased and is continually enlarging.

"Why may not like results be obtained in the States of Central and South America by the investment of American

capital and the application of American energy? The idea of building a railway from the United States to the Argentine Republic is somewhat startling to those who have never given the subject a thought, but a little reflection will convince any one that no insuperable obstacle is in the way of such an enterprise. A railroad from some point in Texas, or elsewhere in this country where a connection is formed with the railroad system of the United States to the City of Mexico, and thence through the Republic of Mexico and Central America, and along the Isthmus of Darien, passing east of the Andes through South America to the Argentine Republic, would meet with but few natural obstacles in the way of its construction, and the distance will not exceed six thousand eight hundred miles, and may be shortened to six thousand miles by commencing its construction at the City of Mexico, where it will connect with roads already built or in process of construction. Distance and natural obstacles have never thwarted American enterprise in the construction of railways. * * * From Gautemala and Honduras to Chili and the Argentine Republic, embracing the several independent and progressive commonwealths of Salvador, Nicaragua, Costa Rica, Colombia, Venezuela, Equador, Peru, Bolivia, Brazil, Paraguay, and Uruguay, the conditions of topography, soil, climate, population, productions, and all other circumstances, actual and prospective, are believed to be such as to invite and fully justify the construction of the great line of railway suggested by this bill, and when it is constructed our commerce will be enlarged to such an extent as at this time to defy anything like a correct estimate of its value; and then we will be in a position to say to European governments, in the memorable words of President Monroe: 'That we should consider an attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety.' "

It is a pity that our legislation, both State and Federal, has not been shaped more by the dictates of enterprise and the views of genius; but the spirit of progress is abroad in the land, and the development of our national resources and advantages championed by such men as Mr. Stewart in

Congress, and promoted by the able statesmen who now guide the helm of government, will assume a shape and pace commensurate with the destinies of our country, and it is doubtless but a question of time when a railway will connect New York and Chicago with Rio de Janeiro and Buenos Ayres.

As a lawyer, Mr. Stewart has been eminently successful in both branches of the profession, and has been engaged in many important cases, both civil and criminal, before the Texas courts. Among the most noted, perhaps, are *The State v. Walker and Black*, which has been several times before the Supreme Court as well as before the Court of Appeals, and the case of *The State v. Grissom*, which has been before the Court of Appeals twice. He was appointed by the court to defend a negro woman, then a slave, charged with murder, which he zealously undertook, though there was great prejudice against her. She was convicted and sentenced to be hanged, but in the midst of severe criticism he appealed her case, and she was finally acquitted. It was the case of *Elizabeth v. The State*, 27 Texas, 329. His briefs were argued by Judge Hancock, who attended to the case for him before the Supreme Court, and hence Mr. Stewart's name does not appear in the report of the appeal. The most interesting case, perhaps, in which he has been engaged was that of *The State v. O'Brien*, tried before the Criminal District Court of Harris County in 1876. The defendant had found his wife, a beautiful woman, in a house of ill-fame, and upon her refusing to leave the place, he deliberately shot her to death. The defense was emotional insanity, and the defendant was acquitted.

He is thoroughly familiar with the Texas land system and the laws of corporations, and has been engaged in many important suits against railroads, as well as in land litigation. He has been associated in practice with several gentlemen of ability. His first copartnership was with Thomas P. Aycock, at Martin, in 1857, which continued until his removal to Houston in 1866, where he became associated with D. U. Barziza, and practiced with him until

1874, when the connection was dissolved by mutual consent, and Mr. Stewart formed a partnership with J. B. Likens, which continued until the death of the latter in 1878. He then received G. H. Breaker into a firm with him, which continues to exist.

Mr. Stewart was married at Marlin in 1860 to Miss Rachel Barry, and, like most men who have achieved eminence and success, he is greatly indebted to the encouragement of the amiable and accomplished lady who early shared his fortunes and shaped his aspirations. In 1883 he was made Grand Master of Masons in Texas, and is devoted to the interests of the fraternity. In social life he is generous, open and kind, ready and prompt to render any assistance in his power to whomsoever may deserve or need it, and few men are held in higher esteem by the community in which they live.

ALEXANDER WHITE.

This venerable lawyer was born in Franklin, Tennessee, on the 16th of October, 1816. His father was of Scotch origin, a native of Jefferson County, Virginia, and a distinguished lawyer. He settled in Alabama prior to the organization of the State government, and was subsequently one of the circuit judges who composed the Supreme Court of the State. Alexander White was reared at Courtland, Alabama, where he early enjoyed the advantages of good schools, and was prepared for a collegiate course. In 1833 he was placed in Jackson College, and was afterwards sent to the University of Nashville, but left the latter institution in 1836, when in his senior year, and joined the army of General Jackson, then engaged in the Florida War. At the close of the campaign, in 1837, he returned to Alabama and located at Talladega, where he immediately began the study of law, and so vigorous was his application that in one year he was admitted to the bar. He began his practice in 1838, and was married during the same year to Miss Eliza J. L. McCauley, of Benton County, Alabama. He soon acquired a good practice, but yielding to the allurements of the opportunity which his ability and popularity opened to him, he turned his attention to politics, and, in 1851, was elected to represent the Seventh Alabama District in Congress, in which he served two years, and in 1856 removed to Selma, Alabama, where his reputation placed him immediately at the head of the bar. In 1860 he was an elector on the Douglas ticket for the Mobile District, and made an active and able canvass for his candidate. In politics he was a Clay Whig, and devoted to the preservation of the Union. He believed that disintegration, or the power of dissolution, as verified by the experience of all republics and confederations of free States, was the source

of consolidation and despotism, and he advocated these principles in many speeches to the people of Alabama. But upon the secession of his State he promptly cast his lot with the Confederacy, and entered the service as a private in Hardee's battalion of mounted infantry, and was taken prisoner at the battle of Selma.

Returning to his State at the close of the war, and devoting himself to its recuperation, he was chosen in 1865 a member of the Alabama Constitutional Convention, and in 1872 was elected on the Republican ticket to a seat in Congress, as the representative of the State at large. In 1875 he was appointed by President Grant Chief Justice of the Supreme Court of Utah. This position he filled with great ability, and his decisions upon the important questions growing out of the Mormon system, elicited the highest commendation from the press and people of the States.

In 1876 Judge White removed to Texas and located at Dallas, where he has taken a high stand at the bar and enjoys a fine practice. He is a thorough lawyer and a man of unquestionable talent and ability. Mr. Burder, in his sketches of distinguished men of Alabama, compliments his professional attainments in glowing terms, and says that he had long stood in the front rank of the bar of that State, and that some of his arguments before the court and appeals to juries were the most powerful ever heard in Alabama. While he has been an assiduous student of his profession, he has cultivated other branches of literature and is a man of culture and scholarly attainments.

Having lost his first wife in 1851, he was again married in 1855 to Miss Narcissa S. Rodgers, of Wilcox County, Alabama, the present accomplished and devoted companion of his old age. He is in religion a strict Presbyterian, a Socrates in moral ethics, and in manners a courteous and polished gentleman. While his decided political opinions, and the candor and boldness with which he has always advocated his views have some times incurred the rancor of collision and party strife, he has always maintained a just and honorable intercourse with his fellow-men, and enjoyed the personal esteem of his bitterest opponents.

THOMAS HARRISON.

The subject of this sketch was born in Jefferson County, Alabama, on the 1st of May, 1823, but in his early youth removed with his father's family to Monroe County, Mississippi, where he was reared and educated; and if ever the beacons of parental virtue shed hallowed light along the pathway of youth, he has had the noblest incentives for vigorous and virtuous exertion in the strife for eminence. The author knew his father, Isham Harrison, well, and he was one of the best men he ever knew. He was known in Mississippi as "Father Harrison," and, as a model of Christian meekness and philanthropy, was held in the highest respect and veneration by all ages and classes of people.

Thomas Harrison removed to Texas in 1843, and soon afterwards began the study of law in the office of his brother-in-law, William H. Jack, of Brazoria County; and when he had prepared himself for the bar he returned to Mississippi and located in Aberdeen, and began the practice of his profession with the view of returning to Texas after having acquired some professional experience among his old friends and neighbors.

But the Mexican war, which was just beginning, kindled in his bosom a spirit of patriotism which no restraints could control, and, in 1846, he enlisted in McClung's company, in the First Regiment of Mississippi Rifles, commanded by Jefferson Davis, and participated in the heroic capture of the fortifications of Monterey. At the expiration of his term of service — one year — he removed to Houston, Texas, and in 1850-51 represented Harris County in the Legislature; but being attracted by the thrift and prospects of Central Texas, he located in 1851 at Marlin,

in Falls County, and in 1855 settled at Waco, which he has made his permanent home.

In 1857 he was induced by his friends to become a candidate for district judge in opposition to Judge R. E. B. Baylor, who had long been a popular incumbent of that office, and after an active canvass was defeated by a small majority.

In 1860 he was elected captain of a volunteer company organized in Waco, and was sent by General Houston on a campaign of six months' service in the regiment of Colonel Dalrymple against the Indians on the frontiers along the Pease, Prairie Dog, and Canadian Rivers. While engaged in this service he was mainly instrumental in compelling the surrender of the United States troops at Camp Cooper, whose stores were a timely contribution to the operations of the campaign. This was perhaps the first attack made by State troops upon the forces of the general government, and removed at the outset a garrison which might have become the nucleus for an invasion of the State. In 1861 he was chosen captain of a company of cavalry organized at Mileau for the Confederate service, and joined the regiment of Colonel B. F. Terry, at Houston, afterwards known as the famous "Texas Rangers." This regiment was ordered to proceed at once to Bowling Green, Kentucky, and upon its reorganization at that place, Captain Harrison was elected major, and from that time his career was identified with that of the gallant Terry. Slowly winning his way by meritorious conduct, he was promoted to lieutenant-colonel, then colonel, and, finally, to the rank of brigadier-general of cavalry, and gained the distinction of being one of the most efficient officers in the army.

His services at Shiloh were conspicuous. He covered the rear of the Confederate army when, on the second day, it retired from the field, and with two hundred of his "Rangers" charged and broke the pursuing cavalry of the enemy, striking and so confusing the van of the advancing infantry that the pursuit was immediately abandoned. He commanded a brigade of cavalry at the battle of Murfreesboro, with which he penetrated the enemy's lines, capturing

a number of pieces of artillery and a large quantity of stores, which he brought out after receiving positive orders to return. He afterwards participated in the capture of Murfreesboro by General Forest, and having served with distinguished efficiency through the severe campaign of General Longstreet against Knoxville, styled the "Valley Forge" of the war, at its close he was recommended for promotion to the rank of brigadier-general by his superior in command, General Armstrong, who characterized him as the best colonel of cavalry in the army.

Gen. Harrison led his column in all the great battles of the army of Tennessee except that of Missionary Ridge, and it was near Rome, Georgia, that the author, who commanded a company of cavalry in Armistead's brigade, first met him, and not under very happy circumstances. That brigade, commanded at that time by the gallant Col. P. B. Spence, had, during two consecutive days, driven back the Federal cavalry in its attempts to advance from Rome, when Gen. Harrison came up with his brigade and took command. In the meantime a corps of Federal infantry had entered Rome, and on the third morning moved out in heavy force with the cavalry. Their object was to strike the line of march of Gen. Hood, who was then moving his army around Rome. Gen. Harrison held his position tenaciously, though his Texas regiments were once or twice driven back by the overwhelming forces of the enemy, and it was in making a flank charge upon these lines of infantry, ordered by Gen. Harrison, who took them for dismounted cavalry, that the author and a large number of his company were taken prisoners. Although his lines were finally broken and driven back by the desperate odds against him, his object was accomplished, and the rear of Hood's army passed safely by.

Gen. Harrison was always at the head of his column, and was almost constantly in the presence of the enemy. His men were devotedly attached to him and had the utmost confidence in his judgment and gallantry, though he was a rigid disciplinarian and exacted the most faithful performance of duty; hence his command was always well

guarded and he never suffered a surprise. He was severely wounded and had several horses killed under him, but he considered himself the property of the service and devoted to the exigencies of war, and he shunned no danger, evaded no hardship, and withheld no effort which the cause he espoused demanded. After the surrender of the army of Gen. Lee, he endeavored to transfer his command to the department of Gen. Smith, but on learning that he, too, had surrendered, his command was paroled and disbanded at Macon, Mississippi, and he returned with his men to Texas.

In 1866 he was elected district judge and served with eminent satisfaction to the bar and the people, but was removed by the military authority in 1877 as one of the incorrigible obstructions to the Congressional plans; but really, as in all the other instances of a like character mentioned in this work, in a spirit of revenge and to make way for the promotion of some Northern adventurer or to reward Southern infidelity.

He was one of the Democratic electors of Texas during the Presidential campaign of 1872, and since that time has devoted himself exclusively to the practice of his profession and the supervision of his farm. He is a good lawyer and a safe counselor, but his strongest professional qualities are those of a successful advocate. He is a man of great independence of character, frank and positive in the expression of his views, tenacious and conscientious in his convictions, and faithful in the discharge of his duties and obligations, both as a lawyer and citizen. These qualities render him popular professionally and socially, and he is a man highly esteemed in every circle and in all the relations of life. He was married at Waco, in 1858, to Miss Sallie E. McDonald, a niece of Gov. John Ellis, the well known Governor of North Carolina during the war, a lady of most excellent qualities, and this event has been felicitous both to his happiness and prosperity.

JAMES M. ANDERSON.

James Monroe Anderson was born in Lawrence County, Alabama, on the 30th day of July, 1824. His parents were natives of Virginia, and his father was by occupation a merchant. He removed from Alabama to Winchester, Tennessee, in 1827, where the subject of this sketch spent his early youth. At the age of twelve years he engaged in business as a clerk, in order to procure the necessary means for obtaining an education, and having accomplished his object, and thoroughly prepared himself, he entered Cumberland University and graduated at that institution in 1848. He then taught school nearly two years, and a portion of that time instructed the advanced classes in Winchester Academy. While engaged in this vocation he devoted his leisure time to the study of law, under the supervision of Judge Nathan Green, afterwards chief justice of Tennessee, and in the fall of 1849 was admitted to the bar at Winchester, where he commenced his practice.

But his immediate prospects in the mountains of Tennessee were not commensurate with his ambition — the opportunities for the exercise of his genius too uncertain for his aspirations, and, in 1850, he removed to Texas, and located at Rusk, in Cherokee County, where he formed a copartnership in the practice of law with Judge Stockton P. Donley, which continued, with the interruption caused by war, until 1866, when the latter was elevated to the Supreme bench.

Mr. Anderson has always been a staunch Democrat, and was an ardent advocate and supporter of the policy of the Southern States in severing their connection with a government hostile to their interests and constitutional rights. He was a member of the Texas Secession Convention of 1862, and voted emphatically for the measures it adopted; and

when General Banks organized his expedition for the invasion of Texas from the Red River, he entered the Confederate army as a private, and participated in the battles which resulted in the defeat of that general.

After the termination of the war, accommodating himself as far as possible to the exigencies of the issue, he resumed the duties of his profession, and, in 1866, removed to Waco, where he has continued to reside, in the enjoyment of a large and successful practice. In 1873 he was elected a member of the Legislature, and, with this exception, has never permitted the emoluments of office or public honors to allure him from the zealous duties of the bar.

At Waco he has attained additional distinction as a lawyer and eminence as a citizen. He is an excellent judge of law, a discreet and able practitioner, and a kind-hearted, congenial man. He is faithful and thorough in the discharge of his professional duties, and when his views have once been established by exhaustive research and confirmed by a sound judgment, he holds on to his cases with a tenacious grip, and pursues them as long as there is a hook of possibility upon which to hang a thread of hope. These well known attributes establish for him a reliability in difficult cases which draws to his practice many of the most important suits that are brought before the courts of his section.

His social characteristics consist of a serene, even-tempered and patient deportment, which never permits his equanimity to be disturbed by those little adverse currents of circumstance which are so often sources of annoyance and perplexity to the greatest and most philosophical men; and of a spirit of accommodation and concession to the views and feelings of others, which, if more prevalent, would render the world better and happier, and elevate the society of men.

W. S. HERNDON.

William S. Herndon is a native of Georgia, and removed with his parents to Texas in 1851, and for several years assisted his father in clearing a farm upon the frontier, but he possessed a fondness for books and a precocious thirst for knowledge, and during the intermission of his farm labors read and reread all the books in the limited library of his father, including the Bible, with which he became remarkably conversant. In 1854 his ambition burst the restraints of the circumstances which surrounded him and he determined to prepare himself for the profession of law. His father abetted his desires with his slender means, and he was placed in McKensie College, where he graduated with honor in 1859. He was a diligent student and early learned the value of methodical employment of his time, and was admitted to the bar in a few months after he began the study of law, receiving the commendation of the court and the committee of lawyers, who examined him, for his thorough knowledge of fundamental principles. Having exhausted his means in his efforts to reach the bar he began the practice of law at Tyler under the gravest difficulties, which no doubt proved the best school for his efforts and shaped his subsequent attainments and success.

He was an ardent devotee of the Southern cause and when the war began in 1861, left his office and enlisted as a private soldier in the Confederate army but soon afterwards attained the rank of captain and served faithfully until the close of the war. He then returned to Tyler and finding himself again penniless determined to begin life anew, and devoted all the energies of his nature to the attainment of professional distinction and success. In 1865 he formed a copartnership with Judge J. C. Robertson,

and this firm has been one of the most successful in the State.

In 1871 the political prospects of Texas were gloomy. Nearly every native Texan had been removed from office by the military authority as being "an obstructionist" and the Democrats scarcely held an office in the State. In the First Congressional District the Republicans had a large majority and scouted the possibility of defeat, but a Democratic convention held at Rusk, in Cherokee County, unanimously nominated Mr. Herndon as candidate for Congress. His energy and determination were the only omens of success; besides he possessed ample means to meet the demands of the canvass, and he accepted the hazardous honor and boldly entered the apparently hopeless contest. He immediately threw down the gauntlet to his opponent, met him on the hustings in a hundred places in the district and discussed with him before the people the issue of the campaign. Every Democrat gathered in his ranks, converts flocked to his standard and it was soon apparent that his strength was growing with hopeful progress. He aroused every effort of his party. He was thoroughly familiar with the Republican party—its history, its rise and its purposes; and he exposed its false principles and hollow pretensions to the view of reason and common sense, and at the close of the canvass his success was assured. He was elected by a majority of more than four thousand votes and permanently planted once more the Democratic standard in his district. He was re-elected to the Forty-third Congress by more than five thousand majority over his Republican competitor.

The sagacity and energy which gained him success at the bar rendered him an able and useful member of the National Congress, and he was particularly noted for his efficient services in the committees of which he was a member. He was an excellent parliamentarian and was familiar with the ethics and tactics required to advance the measures he favored and retard those which he opposed.

On his retirement from Congress in 1875, he returned to vigorous practice of his profession, and since that time

his success at the bar has continued to increase and he has acquired a large fortune as well as professional distinction. His capacity for labor, his fine business qualities and superb management of difficult cases, have gained him a wide popularity and invited an extensive patronage, and his practice, especially in land cases, embraces many counties of the State.

He was chosen a member of the State Convention held at Galveston in 1876, in which he took a prominent part, and was sent as a delegate to the National Convention at St. Louis, which nominated Mr. Tilden for the Presidency. He was made one of the vice-presidents of that convention, and was selected to second the nomination of the candidates in an appropriate speech, and performed this duty in a manner which elicited commendation and applause.

In 1878 he was a member of the Democratic State Convention, which met at Austin, and labored ably and zealously in the interest of Governor Hubbard in opposition to the wing of the Democratic party lead by Governor Throckmorton. Since that time he has declined all opportunities for political preferment, and has devoted himself exclusively to his profession.

Mr. Herndon is a thorough lawyer and a man of fine talents. The natural thirst and inquisitiveness of his mind has led him to search not only the depths of legal science, but the treasures of varied branches of knowledge, and his general culture has kept pace with his professional skill.

His early success was faithfully abetted by the co-operation of an accomplished companion. He was married during the first year of his practice to Miss Maria Louisa McKellar, of Henderson County, a lady whose qualities were peculiarly fitted to promote the sentiments of high resolve and encourage noble exertion. He is a man of active public spirit and enterprise, and is a warm and liberal supporter of every object calculated to promote the interest of society, and especially the welfare of the community in which he resides.

CHAPTER IX.

LEGISLATIVE DATA.

THE CONSTITUTION OF COAHUILA AND TEXAS—THE TEXAN DECLARATION OF INDEPENDENCE—CONSTITUTION OF THE TEXAN REPUBLIC—ARTICLES OF ANNEXATION.

The Constitution of the State of Coahuila and Texas, adopted at Saltillo on the 11th of March, 1827.

The Governor of the free State of Coahuila and Texas to all its inhabitants — *Know*, that the Constituent Congress of the same State has *decreed* and sanctioned the following political Constitution of the free State of Coahuila and Texas.

PRELIMINARY REGULATIONS.

ARTICLE 1. The State of Coahuila and Texas consists in the union of all the *Coahuiltejanos*.

2. It is free and independant of the other United Mexican States, and of every other foreign power and dominion.

3. The sovereignty of the State resides originally and essentially in the general mass of the individuals who compose it; but these do not of themselves execute any other acts of sovereignty than those designated in this Constitution, and in the form which it prescribes.

4. In all matters relating to the Mexican Federation, the State delegates its faculties and powers to the General Congress of the same, but in all that relates to the administration and entire government of the State, it retains its liberty, independence and sovereignty.

5. *Therefore*, belongs exclusively to the same State the right to establish by means of its representation its fundamental laws, conformably to the basis sanctioned in the constitutive act and general Constitution.

6. The Territory of the State is the same which comprehends the Provinces heretofore known by the name of Coahuila and Texas. A constitutional law shall fix their limits with respect to the other adjoining States of the Mexican Federation.

7. The territory of the State is divided for the present, for its better administration, into three departments, which shall be — Bexar, which district embraces the whole of the territory which corresponds to that called the Province of Texas, which alone is a district; Monclova, which comprehends the district of this name and that of the Rio Grande; Saltillo, which embraces the district of this name and that of Parras.

8. Congress hereafter shall have power to alter, vary and modify this division of the territory of the State, in the manner it may deem most conducive to the felicity of the people.

9. The Apostolic Roman Catholic religion is that of the State; this it protects by wise and just laws, and prohibits the exercise of any other.

10. The State shall regulate and defray the expenses which may be necessary for the preservation of worship, in conformity with the regulation of the concordats which the nation shall celebrate with the Holy See, and by these it shall dictate relative to the exercise of patronage in the whole Federation.

11. Every man who inhabits the territory of the State, although he be in transit, shall enjoy the imprescriptible rights of liberty, security, property and equality; and it is the duty of the same State to conserve, and protect by laws, wise and equitable, those general rights of mankind.

12. It is also an obligation on the State, to protect all its inhabitants in the right which they have to write, print and publish freely their thoughts and political opinions, without the necessity of examination, revision, or censure, anterior to the publication, under the restrictions and responsibilities established, or which hereafter may be established, by general laws on the subject.

13. In this State no person shall be born a slave, after

this Constitution is published in the capital of each district, and six months thereafter, neither will the introduction of slaves be permitted under any pretext.

14. It is the duty of every man who inhabits the State to obey its laws, respect its constituted authorities, and contribute to the support of the same State, in the mode which it asks.

15. To the State belongs every species of vacant goods in its territories, and those of its intestate inhabitants who have no legitimate successor in the manner laid down by the laws.

16. The State is composed only of two classes of persons, to wit: inhabitants of Coahuila and Texas (Coahuiltejanos), and citizens of Coahuila and Texas.

17. Those are inhabitants of Coahuila and Texas (Coahuiltejanos): First. All men born and domesticated in the territory of the State and their descendants. Secondly. Those born in any other part of the territory of the Federation, or those who fix their domicil in this State. Thirdly. Those foreigners who are legitimately established in this State, be they of what nation they may. Fourthly. Those foreigners who obtain from Congress letters of naturalization, or have a domicil in the State, obtained according to the law which shall be passed as soon as the Congress of the Union fixes the general rule of naturalization, which it ought to establish conformably to the twenty-sixth clause of the faculties which the Federal Constitution designates.

18. Those are citizens of Coahuila and Texas (Coahuiltejanos): First. All men born in the State and who are domiciled in any part of its territory. Secondly. All citizens of the other States and Territories of the Federation as soon as they become domiciliated in the State. Thirdly. All the children of Mexican citizens who have been born out of the territory of the Federation and who fix their domicil in the State. Fourthly. The foreigners who are actually and legally domiciliated in the State whatever may have been the country of their nativity. Fifthly. Foreigners who enjoy the rights of inhabitants of Coahuila and Texas, have

obtained from Congress special letters of citizenship — the laws will prescribe the merits and circumstances requisite for the concession of such.

19. Those born in the territory of the Federation, and those foreigners resident in it (with the exception of their children), who, at the time of the proclamation of the political emancipation of the nation, were unfaithful to the cause of independence, and emigrated to a foreign country, or that dependent on the Spanish government, are neither entitled to the rights of domiciliation nor citizenship in said State.

20. The rights of citizenship are lost: First. By acquiring naturalization in a foreign country. Secondly. By acquiring a station of profit or honor under a foreign government without permission of Congress. Thirdly. By sentence legally obtained, which imposes personal or infamous punishments. Fourthly. By selling his vote, or buying that of another, for himself or for a third person, whether in popular assemblies, either as Presidents, Tellers or Secretaries, or in the exercise of any other public functions. Fifthly. For having resided five consecutive years out of the limits of the territory of the Federation, without commission of the general government, or particular one of the State, or without its leave.

21. He that has lost the rights of citizenship can not regain them without the express act of restoration by Congress.

22. The exercise of the same rights are suspended: First. For physical or moral incapacity, previously ascertained by judicial decision. Secondly. For not being twenty-one years complete, except those who are married, who can enter upon the exercise of these rights from the time they contract matrimony, of whatever age they may be. Thirdly. For being a debtor to the public funds, the time of payment elapsed, legal requisition therefor made and not complied with. Fourthly. For having been prosecuted criminally, unless the defendant is absolved of the matter, or condemned to punishment not painful or infamous. Fifthly. For not having an employment, trade, or any known

method of obtaining a livelihood. Sixthly. For not knowing how to read and write; but this shall not take effect until the year 1830, with regard to those who hereafter enter into the rights of citizenship.

23. The rights of citizenship can only be destroyed or suspended for the causes stated in articles 20 and 22.

24. None but citizens who are in the exercise of their rights can vote for popular employments in the State, in those instances stated in the law; and these only can obtain the said employments, or any others in the same State.

25. Professional employments form an exception to the second part of the anterior article, which employments can also be conferred on foreigners.

FORM OF THE STATE GOVERNMENT.

26. The object of the State government is the happiness of the individuals who compose it, for the end of all political society is no other than the welfare of the associated.

27. The officers of the government, invested with whatever kind of authority, are no more than mere agents or commissioners of the State, responsible to it for their public conduct.

28. The government of the State is popular representative federal; in consequence it shall not have in it any hereditary office or privilege.

29. The supreme power of the State is divided for its exercise into legislative, executive and judicial, and never can these three powers, nor two of them, be united in one corporation or power, nor the legislative power deposited in one individual.

30. The exercise of the legislative power shall reside in a Congress composed of deputies popularly elected.

31. The exercise of the executive power shall reside in a citizen, who shall be denominated Governor of the State, and who shall also be chosen popularly.

32. The exercise of the judicial power shall reside in the tribunals and courts which this Constitution establishes.

TITLE I.

• THE LEGISLATIVE POWER OF THE STATE.

SECTION I. — OF THE DEPUTIES OF CONGRESS.

33. The Congress consists of the deputies which represent the State, chosen conformably to this Constitution; its number shall be that of twelve members proprietary and six supernumerary members, until the year 1832.

34. The Congress in that year, and in the last of every ten years which follow, shall have power to augment the number of deputies, under the standard of one for every seven thousand souls.

35. The election of proprietary deputies and supernumeraries shall be held in all and every one of the districts of the State. A law shall fix the number of deputies of one and the other class which each district ought to appoint.

36. To be a deputy, proprietary, or supernumerary, it is required to have, at the time of the election, the following qualities: First. To be a citizen in the exercise of his rights. Secondly. To be of the full age of twenty-five years. Thirdly. To be an inhabitant of the State, with residence in it for two years immediately before the election. To natives of the State it is sufficient to possess the two first requisities.

37. It is necessary for those not born in the territory of the Federation, in order to be deputies, proprietary or supernumerary, to have had eight years' residence in it and to be worth eight thousand dollars in property, or to have an income of some business of one thousand dollars annually, and the qualifications provided in the foregoing article.

38. There are excepted from the foregoing those born in any other part of the territory of America, which in the year 1810 depended on Spain, and which may not have united itself to any other nation, or remained in dependence on Spain; to those it is sufficient that they have been three years, complete, in the Mexican Republic, and possess the requisites prescribed in article 36.

39. Those can not be deputies, proprietary or supernumerary: First. The Governor or Vice-Governor of the State; the members of the council of government; the officers of the Federation; the civil functionaries of the State government; the ecclesiastics who exercise any species of jurisdiction or authority in some part of the district where the election may be held; foreigners, at the time when war may exist between the country of their nativity and Mexico.

40. In order that those public functionaries of the Federation, or of the State, comprehended in the anterior article, may be elected deputies, they ought absolutely to have ceased the exercise of their functions four months before the election.

41. If the same individual should be chosen deputy proprietary for two or more districts, the election of that district in which he actually resides shall have preference. If he does not reside in either, the election of the district of his origin shall have preference. If he was neither a resident nor a native of some one of the said districts, that shall stand which the same elected deputy shall designate. In either of these cases, or of the death or inability of the deputies proprietary to discharge their functions according to the judgment of Congress, their duties shall devolve upon the respective deputies supernumerary.

42. If it shall happen that the same citizen is elected deputy supernumerary for two or more districts, in this case the same order of preference provided for in the three first parts of the anterior article prevails. And in the district which remains without a deputy supernumerary, the vacancy shall be filled up by the person who, in the respective electoral assembly, had the next greatest number of votes. In case of a tie, it shall be decided by lot (*suerte*).

43. The deputies, during the discharge of their commissions, shall obtain from the public treasury of the State the compensation which the anterior Congress shall assign; and they shall also receive what may appear necessary for their expenses in going to the place of session, and in returning from them to their houses on the close of the session.

44. The deputies at no time, and in no case, nor before any authority, shall be responsible for the opinions which they manifest in the discharge of their duties. In criminal cases instituted against them, they shall be judged by the tribunals which will be hereafter mentioned; and from the day of their appointment until they have completed the two years of their deputation, they can not be accused unless before Congress, which is constituted a grand jury to declare if there is, or is not, cause for an accusation. In the meantime, during the session, the deputies can not be sued in civil suits, nor arrested for debt.

45. During the time of their deputation, counting for this purpose from the day of their appointment, they can not obtain for themselves any employment from the government, nor shall they solicit it for others, nor even for their promotion, except it be in the regular order of office.

SECTION II. — OF THE ELECTION OF DEPUTIES.

46. For the election of the deputies, there shall be held electoral municipal assemblies, and electoral district assemblies.

PARAGRAPH FIRST — MUNICIPAL ELECTORAL ASSEMBLIES.

47. The electoral municipal assemblies shall be composed of the citizens who are in the exercise of their rights, and who may be inhabitants and residents within the limits of their respective Ayuntamientos, and no person of this can be excused from attending.

48. These assemblies shall be celebrated the first Sunday and the following day, of the month of August, the year anterior to the renovation of Congress, in order to nominate the electors of the district, who are to choose the deputies; and eight days previously, the president of every Ayuntamiento, without the necessity of other order, shall call together the citizens of his district, by a proper notice, or as may be the custom, that they shall convene to make the election at the time and in the form which this Consti-

tution requires, giving prompt notification to the villages of the same district for the information of the inhabitants.

49. In order that the citizens may assist with the greater convenience every Ayuntamiento, according to its locality and the population of its territory, shall determine the municipal assemblies which it ought to form in its limits, and in the public places in which they have to be held, designating the limits of each.

50. They shall be presided, one by the political chief or alcalde, and the remainder by other individuals of the Ayuntamiento to whom it falls by lot, and in default of those, that corporation shall appoint as president of the respective municipal assembly an inhabitant of its own district, who shall know how to read and write.

51. On the aforesaid Sunday in August, at the hour of meeting, the citizens, who have convened in the place designated, shall open the said assembly by appointing from amongst themselves, by a majority vote, one secretary and two tellers, who shall know how to read and write.

52. The elections shall be opened on the two days specified in article 48 for the space of four hours each day, divided between the morning and the evening; and in every one of these assemblies there shall be a register, in which shall be recorded the votes of the citizens who have convened to choose the electors of the district, and the names of the voters and those voted for shall be set down in alphabetical order.

53. To be an elector of a district it is necessary to be a citizen in the exercise of his rights, of the age of twenty-five years complete, to know how to read and write, and to be an inhabitant and resident in some part of the district the year immediately anterior to the election.

54. Every citizen shall choose *viva voce* or by writing the respective electors of the district; in the former case the voter shall call the names of those for whom he votes in a loud voice, which shall be entered in the list and read by the secretary; and it is indispensable that the votes should be written in the register in the presence of the voter. No

person shall vote for himself in this or any other election, under the penalty of loosing the right to vote.

55. In those districts in which there is to be chosen only one deputy there shall be appointed eleven electors, and in those in which two or more are to be chosen there shall be appointed twenty-one electors.

56. The doubts or controversies that may arise as to whether any person or persons possess the qualification of voters shall be decided verbally by the assembly, and its decision shall be executed without appeal, for this time only; *provided*, that such doubt shall not hinge upon the provisions of this constitution or other law. Should there be a tie in resolving the doubt absolutory sentence shall be given.

57. Should complaint arise that bribery, corruption, or force had been used to determine the election in favor of particular persons, a public and verbal investigation shall be made of the matter, and should it appear that the accusation is true, those who have committed the crime shall be deprived of all voice in the election, and false accusers shall suffer the same penalty; and from this judgment there shall be no appeal. Doubts which arise as to the quality of proof shall be decided by the Assembly, in the manner prescribed in the preceding article.

58. Municipal assemblies shall be held with open doors and without any guard whatever; and no individual, whatever his class may be, shall attend them armed.

59. On completion of the two days for which the election is to be kept open, the president, tellers, and secretary of each assembly shall proceed to sum up the votes in the register, which each citizen has received, which shall be signed by the said officers; and by this operation the assembly shall be dissolved; and other acts which may be done shall not only be considered null, but as an attempt against the public security. The said register shall be delivered sealed to the secretary of the respective Ayuntamientos.

60. On the second Sunday of said month of August the Ayuntamientos shall convene in their respective halls in

public session. In their presence, and with the assistance of the president, tellers, and secretary of the municipal assemblies, the registers shall be opened, and after all of them have been examined, a general list shall be formed in alphabetical order, in which shall be comprehended all the individuals voted for, and the number of votes they have received.

61. This list and the certificate which shall be extended on the subject, shall be signed by the president of the Ayuntamiento, the secretary of it, and the secretaries of the assemblies. After which, two copies of the said list shall be drawn off and certified by the same persons, one of which shall be immediately posted up in the next public place, and the other shall be delivered, with the accompanying official letter of the Ayuntamiento, to two individuals appointed by that body to proceed to the capital of the district and there form a general classification of the votes jointly with the commissioners of the other Ayuntamientos.

62. On the fourth Sunday in August the commissioners of the Ayuntamientos shall present themselves with their credentials to the political chief, or, in his absence, to the first alcalde of the capital of the district; and, presided by the first or by the second, as the case may be, shall assemble in public session in the town hall; and, after examining all the lists, they shall form a general list of all the individuals voted for as electors of the district by the citizens of each municipal district respectively, expressing the number of votes they have had and the place of their residence.

63. In order to make this general regulation of votes, the concurrence of not less than four of the commissioners is requisite. In those districts in which there is not that number, the Ayuntamiento of the capital shall name from amongst the individuals of his own body the number deficient.

64. The citizens who, upon the result of this general scrutiny, shall be found to have the greatest number of votes on the list, shall be considered chosen constitutionally as electors. In case of a tie between two or more candidates, it shall be decided by lot.

65. The aforesaid list, and all acts relating to the business, shall be attested by the president, the commissioners, and the secretary of the Ayuntamiento of the capital of the district. Extracted copies of the one and the other authenticated by the same individuals shall be forwarded by the president to the permanent deputation of Congress, the Governor of the State, and the different municipalities of the district.

66. The same president shall present, without any delay, the corresponding certificate to the electors appointed, that they may go to the capital of the department on the day appointed by the Constitution, in order to celebrate the electoral assembly of the same.

PARAGRAPH SECOND — DISTRICT ELECTORAL ASSEMBLIES.

67. The electoral assemblies of the district shall be composed of the electors named by the citizens in the municipal assemblies, who shall assemble in the capital of the respective districts with a view of choosing the deputy or deputies required to assist in Congress as the representatives of the State.

68. Said assemblies shall be holden at the expiration of fifteen days from making the general regulation of votes mentioned in article sixty-two, the electors convening in the town halls or in the building considered most appropriate for so solemn an act, with open doors and without a guard, and no person of whatever class shall appear armed in said assemblies.

69. They shall be presided over by the police chief, and in his default, by the first alcalde of the capital of the district, commencing their sessions by choosing from their own body, by majority of vote, a secretary and two tellers; the president shall then cause the credentials of the electors to be read, which shall be the official letters wherein they are notified of their appointment.

70. The president shall then inquire if there be any legal nullity on the part of any elector for his being such; and should it be proved in the act that there is, the elector shall lose the right of voting. The president shall after-

wards also inquire if any bribery, subornation, or force has been used for the election of any particular person, and should it be proved in the act that there has, the delinquents shall be deprived of a voice, active and passive, and false accusers shall suffer the same penalty. Doubts that arise in either case shall be decided by the assembly in the manner mentioned in article fifty-six.

71. The electors present shall then immediately proceed to make choice of the deputy or deputies corresponding to the district, and they shall be elected one by one, by secret scrutiny, by means of slips which each elector shall deposit in an urn placed upon a table at the foot of a crucifix, after being sworn before the same, and by the president, that for deputies to the Congress of the State, he will give his vote for those citizens who in his opinion possess the qualifications of integrity, probity, and well known adherence to the cause of the national independence.

72. On conclusion of the voting, the president, tellers and secretary shall examine the votes, and the candidate who received more than one-half of the votes shall be deputy, constitutionally elected, the president declaring such election. Should no one have received the absolute majority, the two highest candidates shall be run in a second balloting. Should more than two persons have received a like respective majority, they shall all be run in the second balloting, and the same shall be done when on one has received said majority, but all an equal number of votes. In all these cases the candidate securing the majority of votes shall be elected; should there be a tie, the balloting shall be reported once only, and should there still be a tie, it shall be decided by lot.

73. Should one individual only have received the respective majority, and two or more persons an equal number of votes, but greater than that of all the others, to decide which of them shall run in a second balloting with the former, there shall be a second balloting between them, and the one who should receive the most votes shall enter in competition with the candidate who received the respective majority. In case of a tie the balloting shall be

repeated, and should there still be a tie, it shall be decided by lot. In the second balloting between the one who received the respective majority over all the candidates and his rival, the provision made in the last part of the preceding article shall be observed.

74. When one person only has received the respective majority, and all the rest an equal number of votes, to determine which of the latter shall enter in competition in a second balloting with the former, the entire provision made in the preceding article with this view, in respect to those between whom there was a tie, shall be executed; and to determine which of the rival candidates shall be elected deputy, the provision of the last part of said article shall be observed.

75. The election of deputies proper having closed, that of the substitutes shall immediately follow in the same method and form, and the latter having also terminated, a list containing the names of all the deputies elected, signed by the secretary of the respective assembly, shall be immediately posted in the most public place. The electoral act shall be signed by the president and all the electors; and the former, the secretary and tellers shall forward copies, substantiated by themselves, to the permanent deputation of Congress, to the Governor of the State and to all the Ayuntamientos of the district. Said assemblies, as soon as they have performed the acts pointed out in this law, shall immediately dissolve, and any other in which they interfere shall be null, and, furthermore, reputed an offense against the public safety.

76. The president shall also seasonably dispatch the corresponding official letter to the deputies proper and substitutes, accompanied by an attested copy of the act, to serve them as a credential of their election.

77. No citizen shall decline discharging, from any cause or pretext, the duties mentioned in this section.

SECTION THREE — OF THE SESSIONS OF CONGRESS.

78. The Congress shall assemble each year, to hold its sessions in the place which shall be designated by law, and

in the building which is destined for this object. Whenever it may be deemed convenient to change it to another place, it can be done with the accordance of two-thirds of the whole number of the deputies.

79. The deputies shall present their credentials to the permanent deputation of Congress, in order that they may examine them, by comparing them with the testimonies of the elections of the electoral assemblies of the district.

80. On the 28th day of the month of December, of the year anterior to the renovation of Congress, the newly elected deputies and the members of the permanent deputation shall meet in public session, and shall choose their president and secretary from the said deputation. This meeting shall report as to the legitimacy of the credentials and qualifications of the deputies, and any doubts that may arise on these points shall be definitely determined by a majority vote in this assembly; but the individuals of the permanent deputation who have not been re-elected shall not have a vote.

81. Furthermore, the deputies shall take before the president an oath that they will observe, and cause to be observed, the constitutive act and the Federal Constitution of the United States of Mexico, and the Constitution of the State, and that they will completely discharge their duties.

82. In continuation, the deputies shall then proceed to choose from amongst themselves, by secret ballot, and by an absolute plurality of votes, a president, vice-president, and two secretaries, upon which the permanent deputation shall cease in all its functions, and those of its members not re-elected, having retired, the president of Congress shall declare that it is solemnly and legitimately constituted.

83. For the celebration of the ordinary and extraordinary sessions of Congress, the deputies shall meet four days previous to its organization, in the manner prescribed in the first part of article eighty, in order to resolve in the manner expressed in the second part of the same article upon the legitimacy of the credentials and qualifications of the new deputies who present themselves; and having approved of them, the deputies shall immediately take the oath pre-

scribed by article eighty-one, and shall then proceed to make nomination of president, vice-president, and secretaries, in the same manner as is provided in article eighty-two.

84. The Congress shall open its ordinary sessions on the first day of January in every year, and on the first day of September in each year following the renovation of the same Congress; the Governor of the State being obliged to assist upon so important an occasion, when he shall pronounce a suitable discourse, which the president of Congress shall answer in general terms.

85. On the day after the opening of the ordinary session, the Governor shall present in person to Congress a written account of the state of the public administration, proposing such amendments or reforms as may be required in its different branches.

86. The session of Congress shall be held daily, without other interruption than those of solemn festivals. All the proceedings shall be public, with the exception of those requiring reserve, which may be secret.

87. The ordinary sessions of Congress, commencing on the first of January, shall continue for that month, and the three following, February, March and April, and shall not be prorogued to any other month, except in the two following instances: first, by petition of the Governor; and secondly, if the same Congress deem it necessary—for which there must be the concurrence, in both cases, of two-thirds of the deputies. The ordinary sessions, which commence on the first of September, shall last thirty days of said month, and shall not be prorogued upon any motion or pretext whatever. Both sessions shall be closed with the same formalities which are prescribed for their opening.

88. Before the conclusion of the ordinary session of Congress there shall be appointed a deputation of that body consisting of three members proper and one substitute, which shall continue all the intervening time between one ordinary session and the other, and its president shall be the individual first appointed, and its secretary the last proprietary individual named.

89. When in the intervening time between one ordinary session and another, circumstances or business shall occur requiring the meeting of Congress, it can be convoked in extraordinary sessions, provided it is sanctioned by the unanimous vote of two-thirds of the members of the permanent deputation and of the council of government, which shall meet for that purpose.

90. If the circumstances or business which caused the extraordinary convocation of Congress should be very mighty and urgent, the permanent deputation, united with the council of government and the other deputies, who are in the capital, shall immediately take such necessary measures as the exigencies shall require, and shall give an account thereof to Congress as soon as it may meet.

91. When Congress meets in extraordinary sessions, there shall called to the same the deputies who ought to assist at the ordinary sessions of that year, and they shall be exclusively occupied upon the subject or subjects mentioned in the letter of convocation; but if they have not concluded by the day on which they ought to meet in ordinary sessions, they shall postpone those and continue the business for which the ordinary session had been convoked.

92. The holding of the extraordinary sessions shall not impede the election of the new deputies at the time prescribed in this Constitution.

93. The extraordinary sessions shall be opened and closed with the same solemnities as the ordinary sessions.

94. The resolutions which Congress may take upon the change of its residence, or the prorogations of its sessions, shall be executed by the Governor without any observations upon them.

95. The Congress, in all that belongs to its government and internal order, shall observe the regulations formed by the present Congress, having power to make reforms it may deem necessary.

96. The deputies shall be renewed totally every two years. Those of the interior Congress can be rechosen, but they can not be compelled to accept this trust unless there should be a vacancy of one-half of the deputation.

There shall be excepted in this article the deputies of the present Congress, who can not be re-elected for the next constitutional Congress.

SECTION FOURTH — THE ATTRIBUTES OF CONGRESS.

97. The exclusive prerogatives of Congress are: First. To decree, interpret, amend and repeal the laws relating to the administration and internal government of the State in all its branches. Secondly. To regulate the votes which the citizens may have obtained in the electoral assemblies for Governor, Vice-Governor, and for members of the council of government, and to appoint those officers when ever it shall devolve upon it to do so. Thirdly. To decide by secret ballot the ties that may occur between two or more individuals in elections to these trusts. Fourthly. To resolve the doubts which may arise upon these elections and upon the qualifications of those elected. Fifthly. To examine the excuses which the elected may allege for not accepting those stations and to determine them as it may think proper. Sixthly. To form itself into a grand jury and declare whether there are, or are not, grounds of accusation for neglect of official duty, as well as for ordinary crimes, against the deputies of Congress, the Governor, the Vice-Governor, the members of the council, the Secretary of the State and the members of the supreme tribunal of justice. Seventhly. To render effective the responsibility of these public functionaries, and to do in this case that which is necessary in regard to all others in public office. Eighthly. To fix every year the public expenses of the State, having in view the reports on the subject which shall be presented by the Governor. Ninthly. To establish or confirm the taxes or contributions necessary to meet these expenses under the regulations of this constitution, and that of the federation — to regulate their collection, determine their application, and approve their distribution. Tenthly. To examine and approve the accounts of the application of all public funds of the State. Eleventhly. To contract debts in case of necessity upon the credit of the State and to designate the guarantee for their liquidation. Twelfthly. To decree whatever may

be necessary for the administration, preservation and alienation of the property of the State. Thirteenthly. To create, suspend or suppress the public offices of the State, and to fix, augment or diminish their salaries or pensions. Fourteenthly. To grant premiums or recompenses to corporations or persons who may have rendered distinguished services to the State, and to decree public honors to the posthumous memory of great men. Fifteenthly. To regulate the manner of recruiting the men which may be necessary for the service, or to fill the companies of presidential militia, companies of cavalry, and the active militia of the same army, auxiliary to that which is destined for the defense of the State by their institution, and approve of the distribution which may be made among the towns of the State of their respective quotas, to effect this object. Sixteenthly. To decree that which may be necessary for the enrolling and instruction of the civic militia of the State, and the appointment of its officers conformably to the discipline prescribed, or which may be hereafter prescribed by general laws. Seventeenthly. To promote and encourage by laws, public information and education, and the progress of the sciences, arts, and useful establishments, removing the obstacles which may palsy objects so commendable. Eighteenthly. To protect the political liberty of the press. Nineteenthly. To intervene and give or withhold its consent to all those acts and cases for which this Constitution has provided.

98. The attributes of the permanent deputation are: First. To watch over the observance of the constitutive act, Constitution and general laws of the Union, and the particular ones of the State, in order to give an account to Congress of any infractions it may have observed. Second. To convoke the Congress for extraordinary sessions in those cases, and in the manner described by this Constitution. Third. To discharge the functions which are prescribed in articles seventy-nine and eighty. Fourth. To give notice to the supernumeraries of the time when they shall come to the Congress in the place of the proprietary deputies; and if the death or absolute inability of one or more of them should occur, to

communicate the corresponding orders to the respective districts, in order that they may proceed to a new election. Fifth. To receive the testimonies of the acts of the electors of the electoral district assemblies for Governor, for Vice-Governor, and members of the council of government, and to deliver them to Congress as soon as it is installed.

SECTION FIFTH — FORMATION AND PROMULGATION LAWS.

99. The form, internals, and mode of proceeding in discussing and voting on projects of law or decree shall be provided in the internal rules of Congress.

100. No project of law or decree that should be rejected according to the rules shall be again proposed until the ordinary sessions of the year following; but this shall not prevent any one or more of their articles from forming a part of other projects which have not been rejected.

101. One more than the half of the entire number of deputies shall form a quorum for dictating measures and steps not possessing the character of law or decree. For discussing and voting upon projects of law or decree, and dictating orders of great importance, the concurrence of two-thirds of the members shall be required.

102. Should a project of law or decree, after being discussed, be approved it shall be communicated to the Governor, who, should he also approve it, shall immediately proceed to promulgate and circulate the same with the corresponding formalities; but should he not, he may make thereon such observations as he may deem proper, previously hearing the counsel, and shall return the same, with his remarks, to Congress within ten available days, reckoned from its reception.

103. The projects of law or decree returned by the Governor, according to the preceding article, shall be discussed the second time, and the public speaker, whom the executive should designate, may attend the discussion. Should they be approved by two-thirds of the members present in this second discussion they shall be again communicated to the Governor, who, without objecting, shall immediately pro-

ceed to their formal promulgation and circulation; but should the said projects not be approved in this form they can not be again proposed until the session of the year following.

104. Should any project of law or decree not be returned by the Governor within the time assigned in article one hundred and two it shall be considered from that very fact as sanctioned, and shall be promulgated accordingly, unless Congress should have closed or suspended its sessions for that term, in which case it shall be returned on the first day of the next session.

105. Laws shall be repealed with the same formalities, and by the same steps as they are established.

ELECTION OF DEPUTIES TO THE GENERAL CONGRESS.

106. The electoral district assemblies, on the same day, and in the same method, as they are required to perform the election of deputies to the State Congress, shall proceed to elect the individuals who are to choose the deputies to the General Congress, choosing, for every seven thousand souls, one person possessing the qualifications required by article fifty-three of this Constitution. In districts wherein there proves to be an excess of population of more than three thousand five hundred souls, for this fraction another elector shall be chosen, and in those of which the population does not amount to seven thousand, one shall be chosen notwithstanding. The election having closed said juntas shall forward a certified copy of their act to the Vice-Governor of the State, and also a corresponding attested copy to each person elected, to serve him as a credential.

107. The electors thus chosen shall repair to the capital of the State, where they shall present themselves to the Vice-Governor, or person acting in his stead, and convening under the presidency of either, three days previous to the first Sunday of October, in public session, in the building they consider the most appropriate, they shall choose from among themselves two tellers and a secretary that they may examine the credentials, and report on the day following

whether or not they are in conformity to law. A committee of three persons shall likewise be appointed, to examine the credentials of the secretary and tellers.

108. On the following day they shall again assemble, the minutes shall be read, and should any defect be found in the credentials or qualifications of the electors, the meeting shall decide without adjourning, and the resolutions thereof shall be carried into effect without appeal, for that time and case only, it being understood that the doubt can not turn upon any provision in this or any other law.

109. On the first Sunday of the aforementioned month of October, the electors having convened, and one more than half of them all being present, they shall proceed in the form provided by this Constitution for the election of deputies to the State Congress, to the election of those who are to represent the State in the General Congress. This having been concluded, the meeting shall make the proper provision for complying with article seventeen of the Federal Constitution, and it shall then dissolve.

TITLE II.

EXECUTIVE POWER OF THE STATE.

SECTION FIRST—THE GOVERNOR.

110. The Governor of the State shall possess the following qualifications at the time of his election: First. He shall be a citizen in the exercise of his rights. Second. Born in the territory of the Republic. Third. Thirty years of age complete. Fourth. An inhabitant of this State, having resided five years therein, two of which immediately preceded the election.

111. Ecclesiastics, military and other officers of the Republic, in actual service, can not obtain the office of Governor.

112. The Governor of the State shall continue four years in the discharge of his office, and can not be re-elected to the same office, except in the fourth year after having ceased the functions of his office.

113. The prerogatives of the Governor, his attributes, and the restrictions of his powers, shall be as follows:—

PREROGATIVES OF THE GOVERNOR.

First. The Governor may make observations upon the laws and decrees of Congress in the manner and form prescribed by article one hundred and two, suspending their publication until said Congress resolves thereon, unless in cases excepted by this Constitution. Second. He may propose to Congress such laws or amendments as he thinks conducive to the general good of the State. Third. He may pardon delinquents conformably to law. Fourth. He cannot be accused for any crime whatever, committed during his term of office, and one year after, reckoned from the date whereon he ceased in his functions, except before Congress, and after the expiration of that time, not even before Congress.

ATTRIBUTES OF THE GOVERNOR.

First. To take care that the internal order and tranquility of the State be preserved, and its safety without—for both objects disposing of the militia of the State, of which he shall be commander-in-chief throughout the Territory. Second. To see that the constitutive act, the Federal and State Constitutions, the laws, decrees and orders of the general government, and of the Congress of said State, be fulfilled, issuing the proper orders and decrees for their execution. Third. To form, with the advice of the council, such instructions and regulations as he deems necessary for the better government of the departments of the public administration of the State, which he shall transmit to Congress for approval. Fourth. To appoint agreeably to the constitution and laws, all the officers of State, not chosen by the people, or otherwise provided by law. Fifth. To freely appoint and remove the Secretary of State. Sixth. To see that justice is fully and promptly administered by the tribunals and courts of the State, and that their judgments are executed. Seventh. To take care of the administration and collection of all the State rents, and decree

their disposition according to law. Eighth. To suspend from office, as long as three months, and deprive of even one-half their salary for the same length of time, after having the advice of the council, all officers of the executive department for violating his orders or decrees, transmitting the data on the subject to the respective tribunal, should he think there is a just ground of action. Ninth. To propose to the standing deputation, whenever he thinks proper, after hearing the advice of the council, the convening of Congress to extra session.

RESTRICTIONS OF THE POWERS OF THE GOVERNOR.

The Governor shall not have power: First. To command the civic militia of the State in person without the express consent of Congress, or, during its recess, of the permanent deputation. Whenever he commands the said militia on the aforesaid condition the Vice-Governor shall discharge the duties of Governor. Second. To interfere in the examination of causes pending, or dispose in any manner of the persons of those accused in criminal cases, during the trial. Third. To deprive any one of his liberty, or impose punishment upon him; but when the well being and safety of the State require the arrest of any person, he may effect it on condition of putting the person arrested, within forty-eight hours, at the disposal of a competent tribunal or judge. Fourth. To take possession of the property of any private individual or corporation, or disturb him in the possession, use, or benefit of the same, unless it should be necessary for a purpose of manifest public utility in the judgment of the executive council, in which case he may do so with the concurrence of the council, the approval of Congress, and, during the recess, of the permanent deputation, always indemnifying the party interested agreeably to the opinion of appraisers chosen jointly by the executive and the said party. Fifth. To impede or embarrass in any manner, or under any pretense, the popular elections determined by this Constitution and laws, so that they may not have their entire effect. Sixth. To leave the capital to go to any other part of the State for a longer time than one

month. Should he require a longer time, or should he be under the necessity of leaving the State, he shall request license from Congress, and, during recess, from the permanent deputation.

414. For publishing the laws and decrees of the Congress of the State the Governor shall use the following form:—

“The Governor of the State of Coahuila and Texas, to all the inhabitants thereof: Be it known, that the Congress of said State has decreed as follows: [The original words of the law or decree to be here inserted.] Wherefore, I command it to be printed, published, and duly fulfilled.”

SECTION SECOND — VICE-GOVERNOR.

115. There shall likewise be a Vice-Governor in the State, having the same qualifications as those required for Governor; his term of office four years, and he can not be re-elected to the same office until in the fourth year from having ceased in his functions.

116. The Vice-Governor shall preside over the council, but without having any vote except in case of a tie. He shall also be the police chief of the department of the capital; and when he officiates as Governor the office of political chief shall be discharged by a substitute whom he shall appoint, provisionally with the approval of the council.

117. The Vice-Governor shall discharge the functions of Governor during the vacancy of that office, or when the latter in the opinion of Congress or the permanent deputation, is impeded from serving.

118. When the Vice-Governor also fails, the councilor whom Congress appoints shall act in the place of Governor. Should it be during recess, the appointment shall be made provisionally, until the meeting of Congress, by the permanent deputation.

119. In case of decease or absolute impossibility during the first two years of exercising their functions, a new Governor or Vice-Governor shall be chosen at the time of holding the next election for deputies to Congress.

120. For crimes of any kind whatever, committed during his term of office, the Vice-Governor can be accused only before Congress.

SECTION THIRD — OF THE EXECUTIVE COUNCIL

121. For the better discharge of the duties of his office, the Governor shall have a body of consultation to be styled *Executive Council*, which shall be composed of three voters proprietary and two substitutes, of whom one only can be an ecclesiastic.

122. For being a member of the council the same qualifications shall be required as for being a deputy. Those not eligible as deputies can not be councilors.

123. The council shall be renewed every two years, one voter proper and one substitute, the last chosen, retiring in the first instance, and the other members proper and the other substitute, in the second instance, and so on successively.

124. No councilor can be re-elected until the fourth year from the expiration of his term of office.

125. When the Governor attends the council he shall preside without having a vote, and in that case the Vice-Governor shall not attend.

126. The secretary of the council shall be one of the members thereof, in the manner and form provided in its internal rules, which the council itself shall form and present to the executive who shall transmit them to Congress for approval.

127. The attributes of the council shall be as follows:—

First. To give the Governor a written report in all business wherein the law imposes on the latter the duty of requesting the same, and in other matters wherein the Governor himself thinks proper to consult said body. Second. To watch over the observance of the constitutive act, Federal Constitution, general laws of the Union, and the particular laws of the State, apprising Congress of any violations it may observe. Third. To promote the establishment of, and give activity to, all the branches of prosperity of the State. Fourth. To propose nominations of

three for filling those offices wherein the laws exact this requisite. Fifth. To concur with the permanent deputation agreeable to article eighty-nine, on the convocation of Congress to extra session, and meet with said deputation for the temporary measures that may be necessary in those cases mentioned in article ninety. Sixth. To explain the accounts of all the public funds, and transmit them to Congress for approval.

128. The council shall be responsible for all acts relating to the exercise of its attributes.

SECTION FOURTH — ELECTION OF GOVERNOR, VICE-GOVERNOR AND COUNCILORS.

129. On the day following the election of deputies to Congress each and every electoral district shall chose a Governor, Vice-Governor, three councilors proper and two substitutes, holding said election in the mode and manner prescribed in former articles of this Constitution.

130. Said election having closed, a list signed by the secretary of the assembly, confirming the names of the persons elected and offices for which they were chosen, shall be immediately posted in the most public place. The acts shall be signed by the President and electors, and attested copies thereof, authorized by the said President, secretary and teller shall be transmitted, enclosed in a certified sheet, to the standing deputation.

131. On the day the first ordinary sessions of Congress are opened, the ex-president of the permanent deputation shall present the aforementioned attested copies, and after they are read, Congress shall choose a committee from its own body to which they shall be referred, and said committee shall review the same and report thereon on the third day.

132. On said day Congress shall proceed to determine the elections made by the districts and compute the votes.

133. The person who receives the absolute majority of votes of the district electoral assemblies to be computed according to the whole number of voters composing the

same, shall be Governor, Vice-Governor, or councilor, as the election under consideration may be.

134. Should no person receive the aforesaid majority Congress shall elect for said offices one of the two or more individuals having the highest number of votes, and the same shall be done when no one has said respective majority, but all an equal number of votes.

135. Should one person only receive the respective majority, and two or more an equal number of votes, but greater than that of all the others, Congress shall elect one individual from among the former to be run in competition for the election with the person who received the respective majority.

136. In case of tie the balloting shall be repeated once only, and should there still be a tie it shall be determined by lot.

137. The offices of Governor, Vice-Governor and councilors shall be discharged in preference to any other whatever in the State, and shall necessarily have the same preference among themselves. Those elected to those stations shall take possession thereof on the first of March, and they can not decline serving; except the deputies to Congress at the time of the election, and those who, in the judgment of Congress, are morally or physically incompetent.

138. Should the Governor-elect, from any cause, not be present on said day to enter on the performance of his functions, the Vice-Governor newly chosen shall enter on the discharge of the duties of the office, and should he be also absent, his default shall be supplied agreeably to article one hundred and eighteen.

SECTION FIFTH — SECRETARY OF STATE.

139. The dispatch of all business whatever pertaining to the executive department of the State shall be under the charge of a secretary to be styled — Secretary of State.

140. For holding said office, it shall be required to be a citizen in the exercise of his rights, over twenty-five years of age, a native of this Republic, an inhabitant of this State,

with three years' residence therein, and one year immediately preceding his election. Ecclesiastics can not hold said office.

141. All laws, decrees, orders, regulations and instructions circulated to the towns, or directed by the Governor to a particular corporation or person, as well as the copies emanating from the department shall be authorized by the secretary, and without this requisite they shall not be obeyed or be productive of faith.

142. The secretary shall be responsible with his person and office for whatever he authorizes with his signature contrary to the constitutive act, the Constitution and general laws of the Union, or the particular Constitution and laws of the State, and orders of the President of the Republic not manifestly opposed to said Constitution and laws, without availing him as an excuse, his having done so by order of the Governor.

143. For the internal administration of his office, the rules which the secretary shall form, and Congress approve, shall be observed.

144. Said public officer, also the Governor, Vice-Governor, and councilors shall cease, during their trust, to discharge the duties of any public station they are filling, as soon as they have taken possession of their office.

SECTION SIXTH — DEPARTMENT POLICE CHIEFS AND DISTRICT CHIEFS.

145. In the capital of each department of the State there shall be an officer charged with the political administration thereof, to be styled *Department Police Chief*.

146. To be a department chief it shall be required to be a citizen in the exercise of his rights, to have attained the age of twenty-five years, to be an inhabitant of the State, with three years' residence therein, and one immediately preceding his election.

147. The Governor on the nomination of three persons by the council, supported by reports from the Ayuntamientos of the respective departments, shall appoint the department chiefs, except the one in the capital.

148. The chiefs of department shall be immediately subject to the Governor, and in no way to each other.

149. In the capital of each district, except that in which the department chief resides, there shall be furthermore a subordinate or district chief, appointed by the executive from three persons nominated by the said chief of the department.

150. The subordinate or district chief shall possess the same qualifications as the department chiefs, with the difference that their domiciliation and residence must be within the precincts of the same district, and they shall furthermore have some honorable way of making a living, sufficient to afford them a suitable support.

151. The term of office of the district chiefs shall be the same as that of the department chiefs, and, on nomination by the latter, they may also continue in office.

152. No one can decline serving in said trusts, except in case of re-election to the same within four years from the time of serving, or from some other legal cause in the opinion of the Governor, who shall resolve after hearing the respective chief of department.

153. These, as well as the department chiefs, shall be responsible for all their acts of omission against the Constitution and general laws of the Republic, and those of the States, the former to said chiefs of department, under whose immediate orders they shall act, and the latter to the Governor.

154. The attributes of both chiefs and the manner in which they are to exercise the same shall be detailed in the regulations for the political economical administration of the towns.

SECTION SEVENTH — AYUNTAMIENTOS

155. It shall belong to the Ayuntamientos to attend carefully to the police and internal administration of the towns of the State, and there shall be Ayuntamientos in all those towns where they have before existed.

156. Ayuntamientos shall be established in towns where there are none, wherein it is proper they should exist, and

they shall be established without fail in the district capitals, whatever be the population, and in towns which, of themselves, or with the territory they embrace, contain a population to the amount of one thousand souls; unless said towns should be annexed to another municipality, from which it may not be proper for them to separate, in order that they may have an Ayuntamiento, it shall be so declared by Congress, after receiving the report of the Governor, and the dispatch that shall be formed, assigning the limits that are to embrace the new municipality.

157. Towns that do not possess the population assigned, and which find it practicable being advantageously annexed to another or others, shall continue to be municipalities, and the Ayuntamientos shall be established at the place most convenient in the opinion of the executive.

158. In towns wherein Ayuntamientos can not be established, and which are so distant from the other municipalities that the latter can not attend to the internal administration thereof, the electoral juntas of that to which they belong shall choose a commissary of police and a *sindico procurador* to discharge the duties assigned them in the regulations for the political administration of the towns.

159. The Ayuntamientos shall be composed of the alcalde or alcaldes, sindico or syndicos, and regidores, whose number shall be designated in the aforementioned regulations.

160. To be a member of the Ayuntamientos, it shall be required to be a citizen in the exercise of his rights, over twenty-five years of age, or twenty-one if married, an inhabitant within the jurisdiction of the Ayuntamiento, with three years' residence therein, one year immediately preceding the election, to have some capital or trade whereby to subsist, and to be able to read and write.

161. Public officers receiving a salary from the State, military and other officers of the general government in actual discharge of their duties, and ecclesiastics, can not members of the Ayuntamiento.

162. The alcaldes shall all be replaced every year, of the regidores, one-half their number, and syndicos procuradores

the same, should there be two, should there be only one, he shall be replaced any year.

163. A person who has performed the duties of said trust, can not hold any other municipal office, or be re-elected to that which he filled until after two years from having ceased his functions.

164. The members of the Ayuntamientos shall be chosen by the municipal electoral meetings, which shall be holden in the same manner as the municipal meetings established for the election of deputies to Congress. The former juntas shall be convoked on the first Sunday in December; and they shall meet and perform their duties on the second Sunday and the day following.

165. Pursuant to the action of said meetings, those citizens who have received the greatest number of votes in the respective lists shall be considered constitutionally elected as *alcaldes*, *regidores* and *sindicos*. In case of a tie between two or more persons, it shall be decided by lot by the Ayuntamiento acting at the time of election.

166. Should any member of the Ayuntamiento decease, or his office become vacant from any other cause, the person receiving the highest number of votes in the order of the respective list shall succeed him in the discharge of the duties.

167. Ayuntamiental offices shall be municipal charges, which no one can decline.

TITLE III.

ADMINISTRATION OF JUSTICE IN GENERAL.

168. The administration of justice in civil and criminal cases shall belong exclusively to the tribunals and courts of justice, which agreeably to the constitution should exercise the judicial power.

169. Neither Congress or the Governor can remove cases pending from an inferior to a superior court, nor can the tribunals and courts of justice themselves open those already concluded.

170. Every inhabitant of the State shall be judged by competent tribunals and judges, established prior to the act by which he is judged, and in no way by special commission or retroactive law.

171. The laws shall regulate the order and formalities to be observed in suits at law. These shall be uniform in all the courts of justice and tribunals, and no authority can dispense therewith.

182. The tribunals and courts of justice, being authorized solely for applying the laws, shall never interpret the same, or suspend their execution.

173. Military men and ecclesiastics, residing in the State, shall continue subject to their respective authorities.

174. No affair shall have more than three processes and a like number of determinate decisions. The law shall provide which of said sentences shall produce a warrant of attorney, and from said sentence no other appeal shall be admitted than that of nullity, in the form and for the purposes the law provides.

175. A judge who has rendered a decision in a case, in any process thereof, can not take cognizance anew in any other process whatever, or in appeal of nullity interposed in said case.

176. Bribery, subornation and prevarication are grounds for public action against the magistrate or judge who should commit the same.

177. Justice shall be administered in the name of the State, in the manner the laws prescribe.

PARAGRAPH ONE — ADMINISTRATION OF JUSTICE IN CIVIL MATTERS.

178. Every inhabitant of the State shall be perfectly free to terminate his controversies, whatever be the state of trial, by means of arbitrators, or in any other extra-judicial manner. His agreements in this particular shall be strictly observed, and the decisions of the arbitrators executed, should the parties on making the mutual promise not reserve the right of appeal.

179. Cases of a small amount shall be terminated by exe-

cutive measures which shall be executed without any recourse. A particular law shall fix the sum and mode of proceeding therein.

180. In other civil and criminal matters in respect to wrongs there shall be a trial by conciliation, and without proving that this means has been attempted a trial by writing can not be established, except in cases which the law itself shall determine.

PARAGRAPH TWO — ADMINISTRATION OF JUSTICE IN CRIMINAL MATTERS.

181. All criminal actions, for light transgressions that should be punished by correctional penalties, shall be decided by executive judgment without the form or shape of trial, and from the result no appeal or other recourse can be interposed. The law shall assign said penalties, and determine the crimes to which they correspond.

182. In grave offenses summary information of the fact shall be drawn up authoritatively, without which requisite and that of the corresponding consequent warrant that shall be notified to the accused, and a copy thereof communicated to the jailor, no person can be a prisoner.

183. Should the judges not be able immediately to fulfill the provision of the preceding articles, the person arrested shall not be considered a prisoner but in the light of one detained, and should the jail warrant not be made known to him within forty-eight hours, and communicated to the jailor, he shall be discharged.

184. A person who gives bail in said cases, wherein it is not expressly prohibited by law, shall not be taken to prison, and in whatever state of the case it appears that corporal penalty can not be imposed on the prisoner, he shall be released under bail.

185. Those who have to declare in criminal matters upon their own actions shall do so without being under oath.

186. All persons may arrest a delinquent in the act and conduct him to the presence of the judge.

187. The greatest care shall be taken that the jails serve only for securing, and not for molesting the accused.

188. Criminal causes shall be public in the manner and form the laws provide as soon as it is proposed to receive the declaration of the accused in reply to the charges.

189. The confiscation of property shall forever be prohibited, and even the seizure thereof can only be effected on proceeding in crimes involving a pecuniary responsibility, and only in proportion thereto.

190. Torture and compulsion shall never be used; and penalties imposed, whatever be the crimes, shall never pass to the family of him who suffers them, but they shall have their effect solely upon the person who deserved them.

191. No authority of the State can issue a mandate for searching the houses, papers, and other effects of the inhabitants thereof, except in those cases, and in the form, the laws provide.

192. One of the main objects of attention of Congress shall be to establish the trial by jury in criminal cases, to extend the same gradually, and even to adopt it in civil cases in proportion as the advantages of this valuable institution become practically known.

PARAGRAPH THREE — THE COURTS OF JUSTICE.

193. The inferior courts of justice shall continue in the manner and form that shall be prescribed by law, until in the judgment of Congress the State rents permit the establishment of learned judges, who shall be appointed in each district.

194. In the capital of the State there shall be a supreme tribunal, divided into three halls, each composed of the magistrate, or magistrates, whom the law designated, and said tribunal shall have a fiscal, who shall dispatch all the subjects of the three halls. Should the hall consist of one minister only said special law shall determine whether colleagues should be appointed, and the manner and form in which it shall be done.

195. The two first halls shall take cognizance in the second and third processes of civil cases of inferior courts of justice, and also of criminal cases according as the laws determine.

196. It shall belong to the third hall: First, to decide the power of inferior judges; second, to determine appeals of nullity, interposed from executing judgments in first, second and third processes; third, to take cognizance in all compulsive appeals interposed from the ecclesiastical tribunals and authorities of the State; fourth, to examine the lists that shall be transmitted to the same monthly of causes pending in the first, second and third processes, communicate a copy thereof to the Governor, and provide for their publication through the press; fifth, to hear doubts of law that occur to the two first halls and to the primary tribunals, and communicate them to Congress through the channel of the Governor, accompanied by the corresponding report.

197. Actions for transgressions in office entered against inferior judges, and also those formed for crimes of the same kind, and those in general against the deputies of Congress, the Governor and Vice-Governor, Councilors, Secretary of State, and members of the tribunal of justice, shall be opened and closed in all their processes before the said supreme tribunal. The law shall mark out the other powers of the same in its respective halls.

198. In case an action ought to be entered against the whole tribunal, or any of its halls, Congress shall appoint another special tribunal, composed of the corresponding halls, and the latter of the magistrate or magistrates considered necessary.

199. The special tribunal appointed by Congress for these cases shall take cognizance of all appeals of nullity in actions of the supreme tribunal of justice, in those of the individuals mentioned in the preceding article, and in subjects pertaining to the third hall.

200. To be a magistrate or fiscal it shall be required to be a citizen in the exercise of his rights, over twenty-five years of age, a native of the republic, and an upright and enlightened lawyer.

201. Both magistrates and fiscal shall be appointed by Congress on nomination by the executive. They shall receive a competent salary, to be designated by law, and can

not be removed from office except for a legally established cause.

202. The members of the supreme tribunal of justice shall be responsible for all their proceedings in the discharge of their functions, and may be accused therefor before Congress by any individual of the people whatever.

TITLE IV.

SOLE SECTION — THE STATE REVENUE.

203. The taxes of the individuals composing the State shall form its public revenue.

204. Said taxes may be direct, general, or municipal; but of whatever kind they are, they shall be proportionate to the expenditures they are intended to cover, and to the property of the citizens.

205. Taxes can not be levied except for paying the portion corresponding to the state of the general disbursements of the republic, and for covering the particular expenses of the State. The taxes for the latter object shall be fixed expressly, on the first term of session every year, and according to pre-estimate to be presented by the Governor and approved by Congress.

206. The present taxes shall continue until their repeal be published, and said repeal can not be decreed except by Congress.

207. There shall be in the capital a general treasury for the receipt, custody, and distribution of the whole product of the State rents.

208. No disbursement that has not been for covering expense approved by Congress, or special order of the Governor, shall be allowed the treasurer in account.

209. The business rooms of the State revenue shall be regulated by particular instructions.

210. Congress shall choose three individuals every year from within or without its own body, to examine the accounts of the State treasury, and afterwards to present or communicate the same, accompanied by their report to

Congress for approval. Said approval, or the resolution that should be adopted by Congress, shall be published and circulated to the Ayuntamientos, in order that they in turn may publish and circulate the same in their districts.

TITLE V.

SOLE SECTION — CIVIC MILITIA OF THE STATE.

211. Corps of civic militia shall be established in all the towns of the State, and the said corps shall compose the military force of the State.

212. The formation of said corps, their organization, discipline, and internal government, shall be regulated by Congress in conformity to the provision made on the subject by the general laws of the Republic.

213. Congress shall regulate the service of said militia so that while it is adapted to the purposes of its institution and to the best interests of the State, it may be as little onerous as possible to the citizens.

214. No *Coahuil-Texano* can decline lending said service when required by law, and in the manner it provides.

TITLE VI.

SOLE SECTION — PUBLIC EDUCATION.

215. In all towns of the State a suitable number of primary schools shall be established, wherein shall be taught reading, writing, arithmetic, the catechism of the Christian religion, a brief and simple explanation of this Constitution, and that of the Republic, the rights and duties of man to society, and whatever else may conduce to the better education of youth.

216. The seminaries most required for affording the public the means of instruction in the sciences and arts useful to the State; and wherein the aforementioned constitutions shall be fully explained, shall be established in suitable places, and in proportion as circumstances go on permitting.

217. The method of teaching shall be uniform throughout the State, and with this view, also to facilitate the same, Congress shall form a general plan of public education, and regulate by means of statutes and laws all that pertains to this most important object.

TITLE VII.

SOLE SECTION — OBSERVANCE OF THE CONSTITUTION.

218. The observance of the Constitution in all its parts shall be one of the first and most sacred duties of the inhabitants of the State of Coahuila and Texas, and neither Congress, or any other authority, can exempt them therefrom; and every *Coahuil-Texano* may demand said observance, making a representation with that view to Congress or the executive.

219. For any violation of the Constitution whatever, the person who committed it shall be personally responsible. In order to render said responsibility effective, Congress shall dictate the laws and decrees it thinks conducive to that end; and furthermore, every year in its first sessions, take under deliberation the infringements manifested to the same by the permanent deputation and executive council, and adopt the proper resolution thereon.

220. The public functionaries of the State, of whatever class, shall make oath, on entering in possession of office, to observe, support, and defend the constitutive act, the Constitution of the Republic, and that of the State, and faithfully discharge the duties of their office.

221. Propositions upon amendment, alteration, or repeal of any one or more of its articles, shall be made in writing, and supported and signed by a third part of the deputies.

222. The Congress, in whose time any of the said propositions are made, shall make no further provision during the two years of its sessions, than for the reading and printing of the same, with the original reasons with which they are supported.

223. The Congress following shall receive the propositions for said discussion, and accept or reject them; and if

accepted, they shall again be printed and circulated by the executive to be read in the immediate electoral juntas previous to electing deputies to Congress.

224. The alterations, amendments or repeals proposed shall be discussed in the Congress that follows, and should they be approved, they shall be immediately published as constitutional articles.

225. For the amendments, alterations and repeals indicated, besides the rules prescribed in the foregoing articles, all those provided for forming and repealing laws, shall be observed, with the exception of the right of making observations granted the Governor, which shall not in these cases be conceded.

SANTIAGO DEL VALLE, *President*.

JUAN ANTONIO PADILLA, *Secretary*.

TEXAS INDEPENDENCE.

THE CONSULTATION.

On the 15th of August, 1835, the citizens of Columbia, Texas, held a meeting, in which it was declared that a consultation of all Texas through her representatives was indispensable; and agreeably to this resolution the citizens of the several municipalities of the province elected delegates to meet in general consultation, at San Felipe de Austin on the 13th of October. A number of the delegates convened on the day specified, but a governor not having arrived, the meeting was adjourned to the 1st day of November, when after completing its organization in consultation on the 7th of November unanimously adopted the following:—

“ Declaration of the people of Texas in general convention assembled

“ Whereas, General Antonio Lopez de Santa Anna and other military chieftains have by force of arms overthrown the federal institutions of Mexico, and dissolved the social compact which existed between Texas and the other members of the Mexican confederacy; now the good people of Texas, availing themselves of their natural rights, solemnly declare:—

“ 1st. That they have taken up arms in defense of their rights and liberties, which were threatened by the encroachments of military despots, and in defense of their republican principles of the federal constitution of Mexico, of eighteen and twenty-four.

“ 2d. That Texas is no longer morally or civilly bound by the compact of union; yet, stimulated by the generosity

and sympathy common to a free people, they offer their support and assistance to such of the members of the Mexican confederacy as will take up arms against military despotism.

“3d. That, they do not acknowledge that the present authorities of the nominal Mexican republic have the right to govern within the limits of Texas.

“4th. That they will not cease to carry on war against the said authorities whilst their troops are within the limits of Texas.

“5th. That they hold it to be their right during the disorganization of the federal system, and the reign of despotism, to withdraw from the union to establish an independent government, or to adopt such measures as they may deem best calculated to protect their rights and liberties; but that they will continue faithful to the Mexican government so long as that nation is governed by the constitution and laws that were formed for the government of the political association.

“6th. That Texas is responsible for the expenses of her armies now in the field.

“7th. That the public faith of Texas is pledged for the payment of any debts contracted by her agents.

“8th. That she will reward by donations in lands all who volunteer their services in her present struggle, and receive them as citizens.

These declarations we solemnly avow to the world, and call on God to witness their truth and sincerity, and invoke defeat and disgrace upon our heads, should we prove guilty of duplicity.”

The consultation having thus established a provisional government adjourned on November 14th, to meet again on the 1st day of March, 1836, unless convoked sooner by the Governor and council. It reconvened on the 1st day of March at the town of Washington, on the Brazos, and proceeded immediately to appoint a committee to draft a declaration of independence which made its report on the next day.

THE TEXAS DECLARATION OF INDEPENDENCE.

MADE AT THE TOWN OF WASHINGTON, ON THE 2D OF MARCH, 1836

When a government has ceased to protect the lives, liberty and property of the people, from whom its legitimate powers are derived, and for the advancement of whose happiness it was instituted; and so far from being a guarantee for their inestimable and inalienable rights, becomes an instrument in the hands of evil rulers for their oppression; when the federal republican Constitution of their country, which they have sworn to support, no longer has a substantial existence; and the whole nature of their government has been forcibly changed, without their consent, from a restricted Federative Republic, composed of sovereign States, to a consolidated central military despotism, in which every interest is disregarded but that of the army and the priesthood, both the eternal enemies of civil liberty, the ever ready minions of power, and the usual instruments of tyrants; when, long after the spirit of the Constitution has departed, moderation is at length so far lost by those in power, that even the semblance of freedom is removed, and the forms themselves of the Constitution discontinued; and so far from their petitions and remonstrances being regarded, the agents who bear them are thrown into dungeons, and mercenary armies sent forth to enforce a new government upon them at the point of the bayonet.

When in consequence of such acts of malfeasance and abduction on the part of the government, anarchy prevails, and civil society is dissolved into its original elements — in such a crisis the first law of nature, the right of self-preservation, the inherent and inalienable right of the people to

appeal to first principles, and take their political affairs into their own hands in extreme cases, enjoins it as a right towards themselves, and a sacred obligation to their posterity, to abolish such government, and create another in its stead, calculated to rescue them from impending dangers, and secure their welfare and happiness.

Nations, as well as individuals, are amenable for their acts to the general opinion of mankind. A statement of a part of our grievances is therefore submitted to an impartial world, in justification of the hazardous, but unavoidable step now taken, of severing our political connection with the Mexican people, and assuming an independent attitude among the nations of the earth.

The Mexican government by its colonization laws invited and induced the Anglo-American population of Texas to colonize its wilderness under the pledged faith of a written Constitution, that they should continue to enjoy that constitutional liberty and Republican government to which they had been habituated in the land of their birth, the United States of America.

In this expectation they have been cruelly disappointed, inasmuch as the Mexican nation has acquiesced in the late changes made in the government of General Antonio Lopez de Santa Anna who, having overturned the Constitution of his country, now offers to us the cruel alternatives, either to abandon our homes, acquired by so many privations, or submit to the most intolerable of all tyranny, the combined despotism of the sword and the priesthood.

It hath sacrificed our welfare to the State of Coahuila, by which our interests have been continually depressed through a jealous and partial course of legislation, carried on at a far distant seat of government, by a hostile majority, in an unknown tongue; and this, too, notwithstanding we have petitioned in the humblest terms for the establishment of a separate State government, and have in accordance with the provisions of the National Constitution, presented to the General Congress a republican Constitution, which was without just cause contemptuously rejected.

It incarcerated in a dungeon, for a long time, one of our citizens, for no other cause, but a zealous endeavor to procure the acceptance of our Constitution and the establishment of a State government.

It has failed and refused to secure on a firm basis the right of trial by jury, that palladium of civil liberty, and only safe guarantee for the life, liberty, and property of the citizen.

It has failed to establish any public system of education, although possessed of almost boundless resources (the public domain), and although it is an axiom in political science, that unless a people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self-government.

It has suffered the military commandants, stationed among us, to exercise arbitrary acts of oppression and tyranny, thus trampling upon the most sacred rights of the citizen, and rendering the military superior to the civil power.

It has dissolved, by force of arms, the State Congress of Coahuila and Texas, and obliged our representatives to fly for their lives from the seat of government, thus depriving us of the fundamental political right of representation.

It has demanded the surrender of a number of our citizens, and ordered military detachments to seize and carry them into the interior for trial, in contempt of the civil authorities, and in defiance of the laws and the Constitution.

It has made piratical attacks upon our commerce by commissioning foreign desperadoes, and authorizing them to seize our vessels, and convey the property of our citizens to far distant ports for confiscation.

It denies us the right of worshiping the Almighty according to the dictates of our own conscience, by the support of a national religion, calculated to promote the temporal interest of its human functionaries, rather than the glory of the true and living God.

It has demanded us to deliver up our arms, which are essential to our defense—the rightful property of freemen—and formidable only to tyrannical governments.

It has invaded our country both by sea and land with intent to lay waste our territory, and drive us from our homes ; and has now a large mercenary army advancing to carry on against us a war of extermination.

It has, through its emissaries, incited the merciless savage, with tomahawk and scalping knife, to massacre the inhabitants of our defenseless frontiers.

It has been, during the whole time of our connection with it, the contemptible sport of successive military revolutions, and hath continually exhibited every characteristic of a weak, corrupt and tyrannical government.

These and other grievances were patiently borne by the people of Texas until they reached that point at which forbearance ceases to be a virtue. We then took up arms in defense of the National Constitution. We appealed to our Mexican brethren for assistance ; our appeal has been made in vain ; though months have elapsed, no sympathetic response has yet been heard from the interior. We are, therefore, forced to the melancholy conclusion that the Mexican people have acquiesced in the destruction of their liberty, and the substitution therefor of a military government.

The necessity of self-preservation, therefore, now decrees our eternal political separation.

We, therefore, the delegates, with plenary powers, of the people of Texas, in solemn convention assembled, appealing to a candid world, for the necessities of our condition, do hereby resolve and declare that our political connection with the Mexican nation has forever ended, and that the people of Texas do now constitute a Free, Sovereign and Independent Republic, and are fully invested with all the rights and attributes which properly belong to independent nations ; and, conscious of the rectitude of our intentions, we fearlessly and confidently commit the issue to the Supreme Arbiter of the destinies of nations.

SIGNERS OF THE DECLARATION.

With a statement furnished by themselves during the Convention.

<i>Name.</i>	<i>Age.</i>	<i>Nativity.</i>	<i>Former Residence.</i>
Richard Ellis.....	54	Virginia	Alabama
C. B. Stewart	30	South Carolina.	Louisiana
James Collinsworth.....	30	Tennessee.....	Tennessee
Edwin Waller.....	35	Virginia.....	Missouri
Asa Brigham.....	46	Massachusetts..	Louisiana
J. S. D. Byom.....	38	Georgia.....	Florida
Frances Ruis.....	54	Texas.....	————
J. Antonio Navarro.....	41	Texas.....	————
J. B. Badyett.....	29	North Carolina.	Arkansas Ty
W. D. Lacy.....	28	Kentucky	Tennessee
William Menifee.....	40	Tennessee.....	Alabama
John Fisher.....	36	Virginia	Virginia
M. Coldwell.....	38	Kentucky	Missouri
W. Motley.....	24	Virginia	Kentucky
L. D. Zavala	47	Yucatan	Mexico
George W. Smyth.....	33	North Carolina.	Alabama
S. H. Everett.....	29	New York.....	New York
E. Stapp.....	53	Virginia	Missouri
Claiborne West.....	36	Tennessee.....	Louisiana
W. B. Scates.....	30	Virginia	Kentucky
M. B. Menard.....	31	Canada	Illinois
A. B. Hardin.....	38	Georgia.....	Tennessee
J. W. Bunton.....	28	Tennessee.....	Tennessee
Thomas G. Gazeley	35	New York.....	Louisiana
R. M. Coleman.....	37	Kentucky	Kentucky
B. Hardiman.....	41	Tennessee.....	Tennessee
R. Potter.....	36	North Carolina.	N. Carolina
Thomas J. Rusk.....	29	South Carolina.	Georgia
Charles S. Taylor.....	28	England.....	New York
John S. Roberts.....	40	Virginia.....	Louisiana
R. Hamilton	53	Scotland	N. Carolina
C. McKinney.....	70	New Jersey....	Kentucky

SIGNERS OF THE DECLARATION — *Continued.*

<i>Name.</i>	<i>Age.</i>	<i>Nativity.</i>	<i>Former Residence.</i>
A. H. Lattimer.....	27	Tennessee	Tennessee
James Power.....	48	Ireland	Louisiana
Sam Houston.....	43	Virginia	Tennessee
David Thomas.....	35	Tennessee.....	Tennessee
E. Conrad.....	26	Pennsylvania ..	Pennsylv'nia
Martin Palmer.....	58	Virginia.....	Missouri
E. O. Legrand.....	33	North Carolina.	Alabama
S. W. Blunt.....	28	Georgia	Georgia
James Gaines.....	60	Virginia.....	Louisiana
W. Clark, Jr.	37	North Carolina.	Georgia
S. Pennington.....	27	Kentucky	Arkansas Ty
W. C. Crawford.....	31	North Carolina.	Alabama
John Turner.....	34	North Carolina.	Tennessee
B. B. Goodrich.....	37	Virginia	Alabama.
G. W. Barnett	43	South Carolina.	Mississippi
J. G. Swisher.....	41	Tennessee	Tennessee
Jessie Grimes.....	48	North Carolina.	Alabama
Thomas Barnett	—	South Carolina.	Mississippi.

The following members were not present at the signing : S. C. Robertson, George C. Childers, S. Rhodes, Fisher, Samuel A. Maverick, John W. Bower, James D. Woods, Andrew Briscoe, John W. Moore ; and the following failed to reach the Convention in time : James Kerr, John J. Linn, and Juan Antonio Podilla.

CONSTITUTION OF THE TEXAN REPUBLIC.

ADOPTED ON THE 17TH OF MARCH, 1836

We, the people of Texas, in order to form a government, establish justice, insure domestic tranquility, provide for the common defense and general welfare, and to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution

ARTICLE I.

SECTION 1. The powers of this government shall be divided into three departments, viz.: Legislative, Executive and Judicial, which shall remain forever, separate and distinct.

SEC. 2. The Legislative power shall be vested in a Senate and House of Representatives, to be styled, the Congress of the Republic of Texas.

SEC. 3. The members of the House of Representatives shall be chosen annually, on the first Monday of September each year, until Congress shall otherwise provide by law, and shall hold their offices one year from the date of their election.

SEC. 4. No person shall be eligible to a seat in the House of Representatives until he shall have attained the age of twenty-five years, shall be a citizen of the Republic, and shall have resided in the county or district six months next preceding his election.

SEC. 5. The House of Representatives shall not consist of less than twenty-four, nor more than forty members, until the population shall amount to one hundred thousand souls, after which time the whole number of representatives shall not be less than forty nor more than one hundred ,

provided, however, that each county shall be entitled to at least one representative.

SEC. 6. The House of Representatives shall choose their own speaker and other officers, and shall have the sole power of impeachment.

SEC. 7. The Senators shall be chosen by districts as nearly equal in free population (free negroes and Indians excepted) as practicable, and the number of Senators shall never be less than one-third nor more than one-half the number of Representatives, and each district shall be entitled to one member and no more.

SEC. 8. The Senators shall be chosen for the term of three years, on the first Monday in September — shall be citizens of the Republic, reside in the district for which they are respectively chosen at least one year before the election, and shall have attained the age of thirty years.

SEC. 9. At the first session of Congress after the adoption of this Constitution, the Senators shall be divided by lot into three classes, as nearly equal as practicable, the seats of the Senators of the first class shall be vacated at the end of the first year, of the second class at the end of the second year, the third class at the end of the third year, in such a manner that one-third shall be chosen each year thereafter.

SEC. 10. The Vice-President of the Republic shall be President of the Senate, but shall not vote on any question unless the Senate be equally divided.

SEC. 11. The Senate shall choose all other officers of their body, and a President, *pro tempore*, in the absence of the Vice-President, or whenever he shall exercise the office of President; shall have the sole power to try impeachments, and when sitting as a court of impeachment, shall be under oath; but no conviction shall take place without the concurrence of two-thirds of all the members present.

SEC. 12. Judgment in cases of impeachment shall only extend to removal from office, and disqualification to hold any office of honor, trust or profit under this government; but the party shall nevertheless be liable to indictment, trial, judgment and punishment, according to law.

SEC. 13. Each House shall be the judge of the elections, qualifications and returns of its own members. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members.

SEC. 14. Each House may determine the rules of its own proceedings, punish the members for disorderly behavior, and with the concurrence of two-thirds, may expel a member, but not a second time for the same offense.

SEC. 15. Senators and Representatives shall receive a compensation for their services, to be fixed by law; but no increase of compensation or diminution shall take effect during the session at which such increase or diminution shall have been made. They shall, except in case of treason, felony, or breach of the peace, be privileged from arrest during the session of Congress, and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

SEC. 16. Each House may punish, by imprisonment during the session, any person not a member who shall be guilty of any disrespect to the House by any disorderly conduct in their presence.

SEC. 17. Each House shall keep a journal of its proceedings, and publish the same, except such parts as, in its judgment, require secrecy. When any three members shall desire the yeas and nays on any question they shall be entered on the journals.

SEC. 18. Neither House, without the consent of the other, shall adjourn for more than three days, nor to any other place than that in which the two houses may be sitting.

SEC. 19. When vacancies happen in either House the executive shall issue writs of election to fill such vacancies.

SEC. 20. No bill shall become a law until it shall have been read on three several days in each House, and passed by the same; unless, in cases of emergency, two-thirds of the members of the House where the bill originated shall deem it expedient to dispense with the rule.

SEC. 21. After a bill shall have been rejected no bill con-

taining the same substance shall be passed into law during the same session.

SEC. 22. The style of the laws of the Republic shall be: "Be it enacted by the Senate and House of Representatives of the Republic of Texas in Congress assembled."

SEC. 23. No person holding an office of profit under the government shall be eligible to a seat in either House of Congress, nor shall any member of either House be eligible to any office which may be created or the profits of which shall be increased during his time of service.

SEC. 24. No holder of public moneys, or collector thereof, shall be eligible to a seat in either House of Congress until he shall have fully acquitted himself of all responsibility, and shall produce the proper officer's receipt thereof. Members of either House may protest against any act or resolution, and may have such protest entered on the journals of their respective Houses.

SEC. 25. No money shall be drawn from the public treasury but in strict accordance with appropriations made by law; and no appropriations shall be made for private or local purposes, unless two-thirds of each House concur in such appropriations.

SEC. 26. Every act of Congress shall be approved and signed by the President before it becomes a law; but if the President shall not approve and sign such act he shall return it to the House in which it originated, with his reasons for not approving the same, which shall be spread upon the journals of each House, and the bill shall then be reconsidered, and shall not become a law unless it shall then pass by a vote of two-thirds of both houses. If any act shall be disapproved by the President the vote on the reconsideration shall be recorded by ayes and noes. If the President shall fail to return a bill within five days (Sundays excepted) after it shall have been presented for his approval and signature the same shall become a law, unless the Congress prevents its return within the time above specified by adjournment.

SEC. 27. All bills, acts, orders, or resolutions to which the concurrence of both Houses may be necessary (motions

or resolutions for adjournment excepted), shall be approved and signed by the President, or, being disapproved, shall be passed by two-thirds of both Houses, in manner and form as specified in section twenty.

ARTICLE II.

SECTION 1. Congress shall have power to levy and collect taxes and imports, excise and tonnage duties, to borrow money on the faith, credit and property of the government, to pay the debts, and to provide for the common defense and general welfare of the Republic.

SEC. 2. To regulate commerce, to coin money, to regulate the value thereof and of foreign coin, to fix the standard of weights and measures, but nothing but gold and silver shall be made a lawful tender.

SEC. 3. To establish post-offices and post-roads, to grant charters of corporations, patents and copyrights, and secure to the authors and inventors the exclusive use thereof for a limited time.

SEC. 4. To declare war, grant letters of marque and reprisal, and to regulate captures.

SEC. 5. To provide and maintain an army and navy, and to make all laws and regulations necessary for their government.

SEC. 6. To call out the militia to execute the law, to suppress insurrections and repel invasion.

SEC. 7. To make all laws which shall be deemed necessary and proper to carry into effect the foregoing express grants of power, and all other powers vested in the government of the Republic, or in any offices or department thereof.

ARTICLE III.

SECTION 1. The executive authority of this government shall be vested in a chief magistrate, who shall be styled the President of the Republic of Texas.

SEC. 2. The first President elected by the people shall hold his office for the term of two years, and shall be ineligible during the next succeeding term, and all subsequent Presidents shall be elected for three years, and be alike in-

eligible ; and in the event of a tie the House of Representatives shall determine between the two highest candidates by *viva voce* vote.

SEC. 3. The returns of the elections for President and Vice-President shall be sealed up and transmitted to the Speaker of the House of Representatives by the holders of elections of each county ; and the Speaker of the House of Representatives shall open and publish the returns in presence of a majority of each House of Congress.

ARTICLE IV.

SECTION 1. The judicial powers of the government shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges of the Supreme and inferior courts shall hold their offices for four years, be ineligible to re-election, and shall, at stated periods, receive for their services a compensation not to be increased or diminished during the period for which they were elected.

SEC. 2. The Republic of Texas shall be divided into convenient judicial districts, not less than three nor more than eight. There shall be appointed for each district a judge, who shall reside in the same, and hold the courts at such times and places as Congress may by law direct.

SEC. 3. In all admiralty and maritime cases, in all cases affecting ambassadors, public ministers or consuls, and in all capital cases, the District Courts shall have exclusive original jurisdiction, and original jurisdiction in all civil cases when the matter in controversy amounts to one hundred dollars.

SEC. 4. The judges, by virtue of their offices, shall be conservators of the peace throughout the Republic. The style of all process shall be, "The Republic of Texas," and all prosecutions shall be carried on in the name and by the authority of the same, and conclude "against the peace and dignity of the Republic."

SEC. 5. There shall be a district attorney appointed for each district, whose duties, salaries, perquisites and term of service shall be fixed by law.

SEC. 6. The clerks of the District Courts shall be elected by the qualified voters for members of Congress in the counties where the courts are established, and shall hold their offices for four years, subject to removal by presentment of a grand jury, and conviction of a petit jury.

SEC. 7. The Supreme Court shall consist of a chief justice and associate judges; the district judges shall compose the associate judges, a majority of whom, with the chief justice, shall constitute a quorum.

SEC. 8. The Supreme Court shall have appellate jurisdiction only, which shall be conclusive, within the limits of the Republic; and shall hold its sessions annually, at such times and places as may be fixed by law; provided, that no judges shall sit in a case in the Supreme Court tried by him in the court below.

SEC. 9. The judges of the Supreme and District Courts shall be elected by joint ballot of both houses of Congress.

SEC. 10. There shall be in each county a County Court, and such justices' courts as the Congress may from time to time establish.

SEC. 11. The Republic shall be divided into convenient counties, but no new county shall be established unless it be done on the petition of one hundred free male inhabitants of the territory sought to be laid off and established; and unless the said territory shall contain nine hundred square miles.

SEC. 12. There shall be appointed for each county a convenient number of justices of the peace, one sheriff, one coroner, and a sufficient number of constables, who shall hold their offices for two years; to be elected by the qualified voters of the district or county, as Congress may direct. Justices of the peace and sheriffs shall be commissioned by the President.

SEC. 13. The Congress shall, as early as practicable, introduce, by statute, the common law of England, with such modifications as our circumstances, in their judgment, may require; and in all criminal cases, the common law shall be the rule of decision.

ARTICLE V.

SECTION 1. Ministers of the Gospel being, by their profession, dedicated to God and the care of souls, ought not to be divested from the great duties of their functions; therefore, no minister of the gospel, or priest of any denomination whatever, shall be eligible to the office of the executive of the Republic, nor to a seat in either branch of the Congress of the same.

SEC. 2. Each member of the Senate and House of Representatives shall, before they proceed to business, take an oath to support the Constitution, as follows:—

“I, A. B., do solemnly swear, or affirm, as the case may be, that, as a member of this General Congress, I will support the Constitution of the Republic, and that I will not propose or assent to any bill, vote or resolution which shall appear to me injurious to the people.”

SEC. 3. Every person who shall be chosen or appointed to any office of trust or profit shall, before entering on the duties thereof, take an oath to support the Constitution of the Republic, and also an oath of office.

ARTICLE VI.

SECTION 1. No person shall be eligible to the office of President who shall not have attained the age of thirty-five years, shall be a citizen of the Republic at the time of the Constitution, or an inhabitant of this Republic at least three years immediately preceding his election.

SEC. 2. The President shall enter on the duties of his office on the second Monday in December next succeeding his election, and shall remain in office until his successor shall be duly qualified.

SEC. 3. The President shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during his continuance in office; and before entering upon the duties of his office, he shall take and subscribe the following oath or affirmation:—

“I, A. B., President of the Republic of Texas, do solemnly swear, or affirm, as the case may be, that I will

faithfully execute the duties of my office, and to the best of my abilities preserve, protect and defend the Constitution of the Republic.”

SEC. 4. He shall be commander-in-chief of the army and navy of the Republic, and the militia thereof; but he shall not command in person, without the authority of a resolution of Congress. He shall have power to remit fines and forfeitures, and to grant reprieves and pardons, except in cases of impeachment.

SEC. 5. He shall, with the advice and consent of two-thirds of the Senate, make treaties; and, with the consent of the Senate, appoint ministers and consuls, and all officers whose offices are established by the Constitution, not herein otherwise provided for.

SEC. 6. The President shall have power to fill all vacancies that may happen during the recess of the Senate; but he shall report the same to the Senate within ten days after the next Congress shall convene; and should the Senate reject the same, the President shall not re-nominate the same individual to the same office.

SEC. 7. He shall, from time to time, give Congress, information on the state of the Republic, and recommend for their consideration such measures as he may deem necessary. He may, upon extraordinary occasions, convene both houses or either of them. In the event of a disagreement as to the time of adjournment, he may adjourn them to such time as he may think proper. He shall receive all foreign ministers. He shall see that the laws are faithfully executed, and shall commission all the officers of the Republic.

SEC. 8. There shall be a seal of the Republic, which shall be kept by the President, and used by him officially; it shall be called the great seal of the Republic of Texas.

SEC. 9. All grants and commissions shall be in the name and by the authority of the Republic of Texas, shall be sealed with the great seal, and signed by the President.

SEC. 10. The President shall have power, by and with the advice and consent of the Senate, to appoint a Secretary

of State, and such other heads of executive departments as may be established by law, who shall remain in office during the term of service of the President, unless sooner removed by the President, with the advice and consent of the Senate.

SEC. 11. Every citizen of the Republic who has attained the age of twenty-one years, and shall have resided six months within the district or county where the election is held, shall be entitled to vote for members of the General Congress.

SEC. 12. All elections shall be by ballot, unless Congress shall otherwise direct.

SEC. 13. All elections by joint vote of both Houses of Congress shall be *viva voce*, shall be entered on the journals, and a majority of the votes shall be necessary to a choice.

SEC. 14. A Vice-President shall be chosen at every election for President in the same manner, continue in office for the same time, and shall possess the same qualifications as the President. In voting for President and Vice-President, the electors shall distinguish for whom they vote as President, and for whom as Vice-President.

SEC. 15. In cases of impeachment, removal from office, death, resignation, or absence of the President from the Republic, the Vice-President shall exercise the powers and discharge the duties of the President until a successor be duly qualified, or until the President, who may be absent or impeached, shall return or be acquitted.

SEC. 16. The President, Vice-President, and all civil officers of the Republic, shall be removable from office by impeachment for, and on conviction of, treason, bribery, and other high crimes and misdemeanors.

SCHEDULE.

SECTION 1. That no inconvenience may arise from the adoption of this Constitution, it is declared by this convention that all laws now in force in Texas, and not inconsistent with this Constitution, shall remain in full force until declared void, repealed, altered, or expire by their own limitation.

SEC. 2. All fines, penalties, forfeitures, and escheats, which have accrued to Coahuila and Texas, or Texas, shall accrue to this Republic.

SEC. 3. Every male citizen who is, by this Constitution, a citizen, and shall be otherwise qualified, shall be entitled to hold any office or place of honor, trust, or profit under the Republic; anything in this Constitution to the contrary notwithstanding.

SEC. 4. The first President and Vice-President that shall be appointed after the adoption of this Constitution shall be chosen by this convention, and shall immediately enter on the discharge of their offices, and shall hold said offices until their successors be elected and qualified, as prescribed in this Constitution; and shall have the same qualifications, be invested with the same powers, and perform the same duties which are required and conferred on the executive head of the Republic by this Constitution.

SEC. 5. The President shall issue writs of election directed to the officers authorized to hold elections of the several counties, requiring them to cause an election to be held for President, Vice-president, Representatives and Senators to Congress, at the time and in the mode prescribed by this Constitution, which elections shall be conducted in the manner that elections have been heretofore conducted. The President, Vice-President, and members of Congress, when duly elected, shall continue to discharge the duties of their respective offices for the time and in the manner prescribed by this Constitution until their successors be duly qualified.

SEC. 6. Until the first enumeration shall be made, as directed by this Constitution, the precinct of Austin shall be entitled to one representative; the precinct of Brazoria to two representatives; the precinct of Bexar, two representatives; the precinct of Colorado, one representative; Sabine, one; Gonzales, one; Goliad, one; Harrisburg, one; Jasper, one; Jefferson, one; Liberty, one; Matagorda, one; Mina, two; Nacogdoches, two; Red River, three; Victoria, one; San Augustine, two; Shelby, two; Refugio, one; San Patricio, one; Washington, two; Milam, one; and Jackson, one representative

SEC. 7. Until the first enumeration shall be made, as described by this Constitution, the senatorial districts shall be composed of the following precincts: Bexar shall be entitled to one Senator; San Patricio, Refugio and Goliad, one; Brazoria, one; Mina and Gonzales, one; Nacogdoches, one; Red River, one; Shelby and Sabine, one; Washington, one; Matagorda, Jackson and Victoria, one; Austin and Colorado, one; San Augustine, one; Milam, one; Jasper and Jefferson, one; and Liberty and Harrisburg, one Senator.

SEC. 8. All judges, sheriffs, commissioners, and other civil officers, shall remain in office, and in the discharge of the powers and duties of their respective offices, until there shall be others appointed or elected under the Constitution.

GENERAL PROVISIONS.

SECTION 1. Laws shall be made to exclude from office, from the right of suffrage, and from serving on juries, those who shall hereafter be convicted of bribery, perjury, or other high crimes and misdemeanors.

SEC. 2. Returns of all elections for officers who are to be commissioned by the President shall be made to the Secretary of State of this Republic.

SEC. 3. The President and heads of departments shall keep their offices at the seat of government, unless removed by permission of Congress, or unless in cases of emergency in time of war the public interest may require their removal.

SEC. 4. The President shall make use of his private seal until a seal of the Republic shall be provided.

SEC. 5. It shall be the duty of Congress, as soon as circumstances will permit, to provide by law a general system of education.

SEC. 6. All free white persons who shall emigrate to this Republic, and who shall, after a residence of six months, make oath before some competent authority that he intends to reside permanently in the same, and shall swear to support this Constitution, and that he will bear true allegiance

to the Republic of Texas, shall be entitled to all the privileges of citizenship.

SEC. 7. So soon as convenience will permit, there shall be a penal code formed, on principles of reformation, and not of vindictive justice; and the civil and criminal laws shall be revised, digested, and arranged under different heads; and all laws relating to land titles shall be translated, revised, and promulgated.

SEC. 8. All persons who shall leave the country for the purpose of evading a participation in the present struggle, or shall refuse to participate in it, or shall give aid or assistance to the present enemy, shall forfeit all rights of citizenship and such lands as they may hold in the Republic.

SEC. 9. All persons of color who were slaves for life previous to their emigration to Texas, and who are now held in bondage, shall remain in the like state of servitude; provided, the said slave shall be *bona fide* property of the person so holding said slave as aforesaid. Congress shall pass no laws to prohibit emigrants from bringing their slaves into the Republic with them, and holding them by the same tenure by which said slaves were held in the United States; nor shall Congress have power to emancipate slaves; nor shall any slaveholder be allowed to emancipate his or her slave or slaves without the consent of Congress, unless he or she shall send his or her slaves without the limits of the Republic. No free persons of African descent, either in whole or in part, shall be permitted to reside permanently in the Republic, without the consent of Congress; and the importation or admission of Africans or negroes into this Republic, excepting the United States of America, is forever prohibited, and declared to be piracy.

SEC. 10. All persons, Africans, the descendants of Africans, and Indians excepted, who were residing in Texas on the day of the Declaration of Independence, shall be considered citizens of the Republic, and entitled to all the privileges of such. All citizens now living in Texas, who have not received their portion of land, in like manner colonists, shall be entitled to their land in the following proportion and manner: Every head of a family shall be

entitled to one league and labor of land ; and every single man of the age of seventeen and upwards, shall be entitled to the third part of one league of land. All citizens who may have, previously to the adoption of this Constitution, received their league of land as heads of families, and their quarter of a league of land as single persons, shall receive such additional quantity as will make the quantity of land received by them equal to one league and labor, and one-third of a league, unless by bargain, sale, or exchange, they have transferred or may henceforth transfer their right to said land, or a portion thereof, to some other citizen of the Republic; and in such case the person to whom such right shall have been transferred, shall be entitled to the same, as fully and amply as the person making the transfer might or could have been. No alien shall hold land in Texas, except by titles emanating directly from the government of this Republic. But if any citizen of this Republic should die intestate or otherwise, his children or heirs shall inherit his estate, and aliens shall have a reasonable time to take possession of, and dispose of the same, in a manner hereafter to be pointed out by law. Orphan children, whose parents were entitled to land under the colonization law of Mexico, and who now reside in the Republic, shall be entitled to all the rights of which their parents were possessed at the time of their death. The citizens of the Republic shall not be compelled to reside on the land, but shall have their lines plainly marked.

All orders of survey legally obtained by any citizen of the republic, from any legally authorized commissioner, prior to the act of the late consultation closing the land offices, shall be valid. In all cases, the actual settler and occupant of the soil shall be entitled, in locating his land, to include his improvements in preference to all other claims, not acquired previous to his settlement, according to the law and this Constitution; provided that nothing herein contained shall prejudice the rights of any citizen from whom a settler may hold land by rent or lease.

And whereas the protection of the public domain from unjust and fraudulent claims and quieting the people in the

enjoyment of their lands, is one of the great duties of this convention; and whereas the Legislature of Coahuila and Texas having passed an act in the year eighteen hundred and thirty-four, in behalf of General John T. Mason, of New York, and another on the fourteenth day of March, eighteen hundred and thirty-five, under which the enormous amount of eleven hundred leagues of land has been claimed by sundry individuals, some of whom reside in foreign countries, and are not citizens of the Republic; which said acts are contrary to articles fourth, twelfth, and fifteenth of the laws of eighteen hundred and twenty-four, of the General Congress of Mexico; and one of said acts, for that cause has, by said General Congress of Mexico, been declared null and void. It is hereby declared that the said act of eighteen hundred and thirty-four, in favor of John T. Mason, and of the fourteenth of March, eighteen hundred and thirty-five, of the said Legislature, of Coahuila and Texas, and each and every grant founded thereon, is, and was from the beginning, null and void; and all surveys made under pretense of authority derived from said acts, are hereby declared to be null and void; and all eleven league claims, located within twenty leagues of the boundary line between Texas and the United States of America; which have been located contrary to the laws of Mexico, are hereby declared to be null and void; and whereas many surveys and titles to land have been made whilst most of the people of Texas were absent from home, serving in the campaign against Bexar, it is here declared that all the surveys and locations of land made since the act of the late consultation closing the land offices, and all titles to land made since that time, are and shall be null and void.

And whereas, the present unsettled state of the country and the general welfare of the people demand that the operations of the land office, and the whole land system shall be suspended until persons serving in the army can have a fair and equal chance with those remaining at home to select and locate their lands, it is hereby declared, that no survey or title which may hereafter be made shall be

valid, unless such survey or title shall be authorized by this convention, or some future Congress of the Republic. And with a view to the simplification of the land system, and the protection of the people and the government from litigation and fraud, a general land office shall be established, where all the land-tillers of the Republic shall be registered; and the whole territory of the Republic shall be sectionized in a manner hereafter to be prescribed by law, which shall enable the officers of the government or any citizen to ascertain with certainty the lands that are vacant, and those lands which may be covered by valid titles.

SEC. 11. Any amendment or amendments to this Constitution may be proposed in the House of Representatives or Senate, and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments, shall be entered on the journals, with the yeas and nays therein, and referred to the Congress then next to be chosen, and shall be published for three months previous to the election; and if the Congress next chosen as aforesaid, shall pass said amendment or amendments by a vote of two-thirds of all the members elected to each House, then it shall be the duty of said Congress to submit said proposed amendment or amendments to the people, in such manner and at such times as the Congress shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of Congress voting thereon, such amendment or amendments shall become a part of this Constitution; provided, however, that no amendment or amendments be referred to the people oftener than once in three years.

DECLARATION OF RIGHTS.

This declaration of rights is declared to be a part of this Constitution, and shall never be violated under any pretext whatever. And in order to guard against the transgression of the high powers which we have delegated, we declare that everything in this bill of rights contained, and every other right not hereby delegated, is reserved to the people.

1st. All men, when they form a social compact, have equal rights, and no man or set of men are entitled to exclusive public privileges or indorsements from the community.

2d. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and they have at all times an inalienable right to alter their government in such a manner as they may think proper.

3d. No preference shall be given by law to any religious denomination or mode of worship over another, but every person shall be permitted to worship God according to the dictates of his own conscience.

4th. Every citizen shall be at liberty to speak, write or publish his opinion on any subject, being responsible for the abuse of that privilege. No law shall ever be passed to curtail the liberty of speech or of the press; and in all prosecutions for libel, the truth may be given in evidence, and the jury shall have the right to determine the law and act under the direction of the court.

5th. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable searches or seizures and no warrant shall issue to search any place or seize any person or thing, without describing the place to be searched or the person or thing to be seized, without probable cause, supported by oath or affirmation.

6th. In all criminal prosecutions, the accused shall have the right of being heard, by himself, or counsel, or both; he shall have the right to denounce the nature and cause of the accusation, shall be confronted with the witnesses against him, and have compulsory process for obtaining witnesses in his favor. And in all prosecutions by presentment or indictment, he shall have the right to a speedy and public trial by an impartial jury; he shall not be compelled to give evidence against himself, or be deprived of life, liberty or property, but by due course of law. And no freeman shall be holden to answer for any criminal charge, but on presentment or indictment by a grand jury, except in the land and naval forces, or in the militia when in actual service in time of war or public danger, or in cases of impeachment.

7th. No citizen shall be deprived of privileges, outlawed, exiled, or in any manner disfranchised, except by due course of the law of the land.

8th. No title of nobility, hereditary privileges or honors, shall ever be granted or conferred in this republic. No person holding any office of profit or trust shall, without the consent of Congress, receive from any foreign State any present, office, or emolument of any kind.

9th. No person, for the same offense, shall be twice put in jeopardy of life or limb. And the right of trial by jury shall remain inviolate.

10th. All persons shall be bailable by sufficient security, unless for capital crimes, when the proof is evident or presumption strong, and the privilege of the writ of *habeas corpus* shall not be suspended, except in cases of rebellion or invasion, when the public safety may require it.

11th. Excessive bail shall not be required, nor excessive fines imposed, or cruel or unusual punishments inflicted. All courts shall be open, and every man for any injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law.

12th. No person shall be imprisoned for debt in consequence of inability to pay.

13th. No person's particular services shall be demanded, nor property taken or applied to public use, unless by the consent of himself or his representative, without just compensation being made therefor according to law.

14th. Every citizen shall have the right to bear arms in defence of himself and the Republic. The military shall at all times and in all cases be subordinate to the civil power.

15th. The sure and certain defense of a free people is a well regulated militia; and it shall be the duty of the Legislature to enact such laws as may be necessary to the militia of this Republic.

16th. Treason against this Republic shall consist only in bringing war against it, or adhering to its enemies, giving them aid and support. No retrospective or *ex post facto* law, or laws impairing the obligations of contracts shall be made.

17th. Perpetuities or monopolies are contrary to the genius of a free government and shall not be allowed; nor shall any law of primogeniture or entailment ever be in force in this Republic.

MEMBERS OF THE CONVENTION WHICH ADOPTED THE CONSTITUTION OF THE TEXAN REPUBLIC.

Name.

Richard Ellis,
C. B. Stewart,
John S. Roberts,
James Collingsworth,
Robert Hamilton,
Edwin Waller,
Collin McKinney,
A. Brigham,
A. H. Latimer,
John S. D. Byrom,
James Power,
Francis Ruis,
Sam Houston,
J. Antonio Navarro,
Edwin Conrad,
William D. Lacy,
Martin Palmer,
William Meniffee,
James Gains,
John Fisher,
William Clark, Jr.,
Matthew Caldwell,
Sydney F. Pennington,
William Motley,
Samuel P. Carson,
Lorenzo D. Zavala,
Thomas J. Rusk,
Stephen W. Blunt,

Name.

George W. Smith,
William C. Crawford,
Stephen H. Everett,
John Turner,
Elijah Stepp,
Benjamin B. Goodrich,
Claiborne West,
James G. Swisher,
William B. Leates,
George Wm. Barnett,
M. B. Menard,
Jesse Grimes,
A. B. Hardin,
E. O. Legrand,
John W. Bunton,
David Thomas,
Thomas J. Gazley,
S. Rhodes Fisher,
R. M. Coleman,
John W. Bomer,
Sterling C. Robertson,
J. B. Woods,
George C. Childress,
A. Briscoe,
Baily Hardeman,
Thomas Barnett,
Robert Potter,
Jesse B. Badgett,

Charles Taylor.

ANNEXATION OF TEXAS.

CONDITIONAL CONSENT OF THE CONGRESS OF THE UNITED STATES.

Resolved, by the Congress of the United States of America in Congress assembled.

1. That Congress doth consent that the territory properly included within, and rightly belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of the Union.

2. *And be it further resolved*, That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees to wit: *First*. Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments; and the Constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six. *Second*. Said State, when admitted into the Union, after ceding to the United States all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defense belonging to the said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to, or be due and owing to said Republic;

and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the government of the United States. *Third.* New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may, hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri Compromise Line, shall be admitted into the Union, with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri Compromise Line, slavery, or involuntary servitude (except for crime), shall be prohibited.

3. *And be it further resolved,* That if the President of the United States shall, in his judgment and discretion, deem it most advisable, instead of proceeding to submit the foregoing resolution to the Republic of Texas, as an overture on the part of the United States for admission, to negotiate with that Republic; then

Be it resolved, That a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries, and with two Representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission, and the cession of the remaining Texan territory to the United States shall be agreed upon by the governments of Texas and the United States. And that the sum of one hundred thousand dollars be, and the same is hereby, appropriated to defray the expenses of missions and negotiations, to agree upon the terms of said admission

and cession, either by treaty to be submitted to the Senate, or by articles to be submitted to the two Houses of Congress, as the President may direct.

Approved, March 1, 1845.

ACCEPTANCE OF THE CONDITIONS OF ANNEXATION BY THE
CONGRESS OF THE REPUBLIC.

Whereas, The government of the United States hath proposed the following terms, guarantees, and conditions, on which the people and territory of the Republic of Texas may be erected into a new State, to be called the State of Texas, and admitted as one of the States of the American Union, to wit (the first and second sections of the foregoing proposition);

And, Whereas, by said terms, the consent of the existing government of Texas is required, therefore:—

SECTION 1. *Be it resolved by the Senate and House of Representatives of the Republic of Texas in Congress assembled*, That the Government of Texas doth consent, that the people and territory of the Republic of Texas may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic, by deputies in convention assembled, in order that the same may be admitted as one of the States of the American Union; and said consent is given on the terms, guarantees, and conditions set forth in the preamble to this joint resolution.

SEC. 2. *Be it further resolved*, That the proclamation of the President of the Republic of Texas, bearing date May fifth, eighteen hundred and forty-five, and the election of deputies to sit in convention at Austin, on the fourth day of July next, for the adoption of a Constitution for the State of Texas, had in accordance therewith, hereby receives the consent of the existing government of Texas.

SEC. 3. *Be it further resolved*, That the President of Texas is hereby requested immediately to furnish the Government of the United States, through their accredited min-

ister near this government, with a copy of this joint resolution; also to furnish the convention to assemble at Austin, on the fourth of July next, a copy of the same. And the same shall take effect from and after its passage.

Approved, June 23d, 1845.

ASSENT OF THE PEOPLE OF THE REPUBLIC IN CONVENTION.

Whereas, The Congress of the United States of America has passed resolutions providing for the annexation of Texas to that Union, which resolutions were approved by the President of the United States on the first day of March, one thousand eight hundred and forty-five; *and, whereas*, the President of the United States has submitted to Texas the first and second sections of the said resolution as the basis upon which Texas may be admitted as one of the States of the said Union; *and, whereas*, the existing government of the Republic of Texas has assented to the proposals thus made, the terms and conditions of which are as follows (quoting the first and second sections of the resolution):

Now, in order to manifest the assent of the people of this Republic as required in the above recited portions of the said resolution; We, the deputies of the people of Texas in convention assembled, in their name, and by their authority, do ordain and declare, that we assent to, and accept the proposals, conditions, and guarantees contained in the first and second sections of the resolution of the Congress of the United States aforesaid.

Done in the City of Austin, Republic of Texas, July 4, 1845.

Phil M. Cuny, H. G. Runnels, Robert M. Forbes, Sam Lusk, John Caldwell, Jose Antonio Navarro, Geo. Wm. Brown, Gustavus A. Everts, Lemuel Dale Evans, J. B. Miller, R. E. B. Baylor, J. S. Mayfield, R. Bache, James Love, Wm. L. Hunter, John D. Anderson, Isaac Parker, P. A. Lumpkin, Francis Moore, Jr., Isaac W. Brashear, Alexander McGowan, Isaac Van Zandt, S. Holland, Edward

Clark, Geo. W. Smyth, James Armstrong, John M. Lewis, James Scott, Archibald McNeill, A. C. Horton, Israel Standefer, Jos. L. Hogg, Chas. S. Taylor, David Gage, Henry J. Jewett, Conit Armstrong, James Power, Albert H. Latimer, Wm. C. Young, J. Pinckney Henderson, Nicholas H. Darnell, Emery Rains, A. W. O. Hicks, James M. Burroughs, H. L. Kinney, Wm. L. Cazneau, A. S. Cunningham, Abner S. Lipscomb, John Hemphill, Van R. Irion, Volney E. Howard, E. H. Tarrant, Francis M. White, James Davis, George T. Wood, G. W. Wright, H. R. Latimer, W. B. Ochiltree, Oliver Jones, B. C. Bagby, Chas. Bellinger Stewart.

Attest: JAMES H. RAYMOND,
Secretary of the Convention.

ADMISSION OF TEXAS INTO THE UNION — DECEMBER 29, 1845.

WHEREAS, The Congress of the United States, by a joint resolution, approved March the first, eighteen hundred and forty-five, did consent that the territory properly included within and rightfully belonging to the Republic of Texas, might be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic, by deputies in convention assembled, with the consent of the existing government, in order that the same might be admitted as one of the States of the Union; which consent of Congress was given upon certain conditions specified in the first and second sections of said joint resolution;

AND WHEREAS, The people of said Republic of Texas, by deputies in convention assembled, with the consent of the existing government, did adopt a Constitution and erect a new State with a republican form of government, and, in the name of the people of Texas, and by their authority, did ordain and declare that they assented to and accepted the proposals, conditions, and guarantees contained in said first and second sections of said resolution;

AND WHEREAS, The said Constitution, with the proper

evidence of its adoption by the people of the Republic of Texas, has been transmitted to the President of the United States and laid before Congress, in conformity to the provisions of said joint resolution ; therefore,

1. *Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the State of Texas shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

2. *And be it further resolved*, That until the Representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the State of Texas shall be entitled to choose two Representatives.

CHAPTER X.

JUDICIAL DATA.

The Constitution of the Republic of Texas required the Supreme Court to consist of a chief justice and associate judges; the district judges composed the associate judges, a majority of whom, with the chief justice, sitting in banc, constituted the Supreme Court.

Chief Justices of the Republic — James Collinsworth, John Birdsall, Thomas J. Rusk and John Hemphill. The first two did not hold any term of the court.

District Judges during the Republic — Shelby Corzine, Benjamin C. Franklin, R. M. Williamson, James W. Robinson, Edward T. Branch, John T. Mills, Ezekiel W. Cullen, Henry W. Fontaine, John Scott, Anthony B. Shelby, William J. Jones, John Hemphill, Richard Scurry, John M. Hansford, R. E. B. Baylor, Anderson Hutchinson, George W. Terrill, Thomas Johnson, Patrick C. Jack, Richard Morris, William B. Ochiltree, William E. Jones, M. P. Norton, John B. Jones, R. T. Wheeler.

Attorneys-General of the Republic — David Thomas, Peter W. Grayson, J. Pickney Henderson, John Birdsall, A. S. Thurston, J. C. Watrous, James Webb, F. A. Morris, George W. Terrill, Ebenezer Allen.

JUDGES OF THE SUPREME COURT OF THE STATE OF TEXAS.

1846 — John Hemphill, chief justice; Abner S. Lipscomb, Royal T. Wheeler, associates. Judge Lipscomb died in 1856, and was succeeded by O. M. Roberts.

1858 — Royal T. Wheeler, chief justice. Hemphill succeeded by James H. Bell, and O. M. Roberts by George F. Moore.

1864 — O. M. Roberts, chief justice, succeeds Wheeler, and Bell is succeeded by Reuben A. Reeves.

1866 — George F. Moore, chief justice; Richard Cooke, S. P. Donley, Asa H. Willie, and George W. Smith, associates. These were all removed in 1867 as impediments to reconstruction, and the following were appointed by military authority: —

1867 — Amos Morrill, chief justice; Livingston Lindsay, Albert H. Latimer, Colbert Coldwell and Andrew J. Hamilton, associates. Moses Walker succeeded Hamilton in 1869, and James Denison succeeded Latimer in 1870.

1870 — Under the Constitution of 1869, Lemuel D. Evans, chief justice; Moses Walker and Wesley Ogden, associates. In 1873 Evans was succeeded by I. D. McAdoo, and Ogden was made presiding judge.

1874 — O. M. Roberts, chief justice (reorganization of the court); Reuben A. Reeves, Thomas J. Divine, George F. Moore, William P. Ballinger, associates. Judge Ballinger resigned immediately, and was succeeded by Peter W. Gray, who also resigned in a few months, and was succeeded by Robert S. Gould, and, in 1875, John Ireland was elected to succeed Divine under the new Constitution.

1876 — O. M. Roberts, chief justice; George F. Moore and Robert S. Gould, associates.

1878 — George F. Moore, chief justice; Robert S. Gould and Micajah H. Bonner, associates.

1881 — Robert S. Gould, chief justice; Micajah H. Bonner, John W. Stayton, associates.

1882–1885 — Asa H. Willie, chief justice; John W. Stayton, Charles S. West, associates.

JUDGES OF THE COURT OF APPEALS.

1876 — M. D. Ector, presiding judge; C. M. Winkler, George Clark, associates.

1879–1885 — John P. White, presiding judge; James M. Hurt, Samuel M. Willson, associates.

JUDGES OF THE COURT OF COMMISSION OF APPEALS WHICH
WAS ESTABLISHED IN 1881 AND RECREATED IN 1883.

1881 — Richard S. Walker, presiding judge; George Quinan, A. S. Walker, associates. Quinan resigned in 1882, and was succeeded by W. S. Delaney, and A. S. Walker by A. T. Watts.

1885 — Richard S. Walker, presiding judge; A. T. Watts, W. S. Delaney, associates.

ATTORNEYS-GENERAL OF THE STATE.

1846–1885 — John W. Harris, 1846; Andrew J. Hamilton, acting, 1849; Ebenizer Allen, 1851; Thomas J. Jennings, 1852; James Willie, 1856; Malcolm D. Graham, 1859; George Flournoy, 1860; N. G. Shelly, 1862; B. E. Turner, 1864; William M. Walton, 1866; William Alexander, 1867; Ezekiel B. Turner, 1868; William Alexander, 1870; George Clark, 1874; H. H. Boone, 1876; G. McCormick, 1878; J. H. McLeary, 1880; John D. Templeton, 1882, re-elected in 1884.

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